Dec 11. Motions
Dec 12. Reversed, Nelson

361

SUPREME COURT OF THE UNITED STATES.

No. ~~242~~. 1877. 33. 47.

JAMES BROWN, PLAINTIFF IN ERROR,

v.

WILLIAM JOHNSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

G. S. GIDEON, Printer, No. 511 Ninth Street, Washington, D. C.

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United States of America, *ss.*

The President of the United States, to the judges of the Circuit Court of the United States for the Southern District of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between James Brown, plaintiff, and William H. Johnson, defendant, a manifest error hath happened, to the great damage of the said James Brown, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States, the

Issued May 28, 1860.

[SEAL.] W. H. BROWN,
Clerk Circuit Court U. S., So. Dist. Miss.

United States of America, *ss.*

To William H. Johnson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the first Monday in December next, pursuant to a writ of error, filed in the clerk's office of the Circuit Court of the United States, for the Ninth Circuit and Southern District of Mississippi, wherein James Brown is plaintiff, and you are defendant, in error, to show cause, if any there be, why the judgment in the said writ of error mentioned

should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, one of the judges of the Circuit Court of the United States for the Southern District of Mississippi, this 28th day of May, in the year of our Lord one thousand eight hundred and sixty, and in the eighty-fourth year of the Independence of the United States.

S. J. GHOLSON.

I acknowledge service of the within citation.

T. A. MARSHALL,
Attorney for W. H. Johnson.

Sept. 7, 1860.

Marshal's Fees.

Service, ...	$2 00
Mileage, ...	3 00
Copy E. and R., ...	1 00
	$6 00

Received 28th May, 1860.

R. GRIFFITH,
Marshal.

Indorsed: Citation. James Brown *v.* William H. Johnson. To the marshal of the Southern District of Mississippi, to execute and return. W. H. Brown, clerk.

JAMES BROWN
v.
WILLIAM H. JOHNSON.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a Circuit Court of the United States in and for the Ninth Circuit and Southern District of Mississippi, held at the city of Jackson, at the May term, in the year of our Lord one thousand eight hundred and sixty.

Be it remembered, that heretofore, to wit, on the twenty-fourth day of March, A. D. 1854, the following writ of summons ad respondendum, issued out of the clerk's office of the court aforesaid, in the words and figures to wit:

Summons.

United States of America, Southern District of Mississippi, *ss.*

The President of the United States to the marshal of the Southern District of Mississippi, greeting:

We command you without delay to summon William Henry John-

son, citizen of the State of Mississippi, that he be and appear at the Circuit Court of the United States, to be held at the city of Jackson, in and for the Southern District of Mississippi, on the first Monday of May next, to answer to James Brown, citizen of the State of New York, of a plea of trespass on the case, to his damage thirty thousand dollars, and that he do file his plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against him by default. And have then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 24th day of March, [L. S.] A. D. 1854, and in the 78th year of the Independence of the United States of America.

W. H. BROWN,
Clerk.

Marshal's Deputation.

I nominate and appoint N. G. Watts, deputy, to execute and return this process.

Witness my hand and seal this 25th March, 1854.

RICHARD GRIFFITH, [SEAL.]
U. S. Marshal So. Dist. Miss.

Marshal's Return.

Executed on William H. Johnson by handing him a copy of the within, April 22d, 1854.

R. GRIFFITH,
Marshal So. Dist. of Miss.
By N. G. WATTS,
D. M.

And on the same day of suing out the writ aforesaid, to wit, on the 24th day of March, A. D. 1854, the plaintiff, by his attorneys (Eustis and Burwell) filed their declaration herein, against said defendant, which is in the words and figures to wit:

Declaration.

United States of America.

Circuit Court of the United States, Southern District of Mississippi.
To May Term, A. D. 1854.

James Brown, a citizen of the State of New York, by attorney, complains of William Henry Johnson, a citizen of the State of Mississippi, residing in the Southern District thereof, who was summoned, &c., of a plea of trespass on the case on promises: for that whereas

the said defendant heretofore, to wit, on the 3d day of October, A.D. 1846, at Vicksburg, to wit, in the district aforesaid, by the name and signature of W. H. Johnson, made his certain promissory note in writing of that date, and thereby, then and there promised to pay to the said plaintiff, or order, on the first day of May, 1847 (meaning the year 1847) the sum of two thousand one hundred and twenty-seven dollars and forty cents, for value received, with interest at the rate of six per cent. per annum, from the 1st day of May last, meaning the 1st day of May, A. D. 1846, and then and there delivered said promissory note to said plaintiff, by means whereof the said defendant became liable to pay the plaintiff the said sum of money in said note mentioned, according to the tenor and effect thereof, and being so liable, then and there promised the said plaintiff to pay to him the same.

And also, for that whereas, the said defendant, by the name and signature of W. H. Johnson, heretofore, to wit, on the 3d day of October, in the year of our Lord one thousand eight hundred and forty-six, at Vicksburg, to wit, in the district aforesaid, made his certain other promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the said promissory note to the said plaintiff, and thereby then and there promised to pay to the said plaintiff, or order, two thousand one hundred and twenty-seven dollars and forty cents, for value received, with interest at the rate of six per cent. per annum from the 1st of May, 1846 (meaning the year 1846) on the first day of May, 1848 (meaning the year 1848), by means whereof, the said defendant then and there became liable to pay the said plaintiff the said sum of money in the said last-mentioned promissory note specified, according to the tenor and effect of said note, and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, undertook and then and there promised to pay said plaintiff the said sum of money in the said note specified, according to the tenor and effect thereof.

And also, for that whereas, the said defendant, by the name and signature of W. H. Johnson, heretofore, to wit, on *on* the 3d day of October, in the year of our Lord one thousand eight hundred and forty-six, at Vicksburg, to wit, in the district aforesaid, made his certain other promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the said promissory note to the said plaintiff, and thereby then and there promised to pay to the said plaintiff, or order, the sum of two thousand one hundred and twenty-seven dollars and forty cents, for value received, with interest at the rate of six per cent. per annum, from the 1st of May, 1846, meaning the year 1846, on the first day of May, 1849, meaning the year 1849, by means whereof, the said defendant then and there became liable to pay the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of

said note, and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, undertook and then and there promised to pay the said plaintiff the said sum of money in said note specified, according to the tenor and effect thereof.

And also, for that whereas, the said defendant, by the name and signature of W. H. Johnson, heretofore, to wit, on the 3d day of October, in the year of our Lord one thousand eight hundred and forty-six, at Vicksburg, to wit, in the district aforesaid, made his other certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the said promissory note to the said plaintiff, and thereby then and there promised to pay to the said plaintiff, or order, the sum of two thousand one hundred and twenty-seven dollars and forty cents, for value received, with interest at the rate of six per cent. per annum, from the first day of May, 1846, meaning the year 1846, on the first day of May, 1850, by means whereof, the said defendant then and there became liable to pay the said plaintiff the said sum of money in the said promissory last-mentioned note specified, according to the tenor and effect of said note, and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, undertook and then and there promised to pay the said plaintiff the said sum of money in the said note specified, according to the tenor and effect thereof. And also, for that whereas, the said defendant, by the name and signature of W. H. Johnson, heretofore, to wit, on the 3d day of October, in the year of our Lord one thousand eight hundred and forty-six, at Vicksburg, to wit, in the district aforesaid, made his certain other promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the said promissory note to the said plaintiff, and thereby then and there promised to pay to the said plaintiff, or order, two thousand one hundred and twenty-seven dollars and forty cents, for value received, with interest at the rate of six per cent. per annum, from the 1st day of May, 1846 (meaning the year 1846), on the first day of May, 1851, meaning the year 1851, by means whereof, the said defendant then and there became liable to pay the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of said note, and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, undertook and then and there promised to pay the said plaintiff the said sum of money in the said note specified, according to the tenor and effect thereof.

And whereas, afterwards, to wit, on the 1st day of March, in the year 1854, at the district aforesaid, the said defendant was indebted to said plaintiff in the further sum of twenty thousand dollars for so much money by said plaintiff before that time lent and advanced to, paid and expended for, said defendant, and at his special instance and

request, and also in the further sum of twenty thousand dollars for other money, by said defendant before that time had and received to and for the use of said plaintiff, and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the day and year and at the district aforesaid, undertook and then and there promised to pay said plaintiff the said last sum of money when requested.

Yet the said defendant, not regarding his said promises and undertaking, hath not as yet paid the said plaintiff the said sums of money, or any one of them, or any part thereof (although often requested so to do), but to pay the same, or any part thereof, to said plaintiff, the said defendant hath hitherto wholly failed and refused, and still doth refuse so to do, to the damage of the said plaintiff of thirty thousand dollars, and therefore he brings this suit, &c.

H. S. EUSTIS and
A. BURWELL,
P. Q.

Bill of Particulars.

The defendant, Dr.
To the plaintiff.

March, 1854.	To amount of your five notes, each, . .	$2,127 40
	Int. on same from 1st May, 1846, . .	10,637 00
	To this amt. paid for you, ...	20,000 00
	To this amt. money had and received, . .	20,000 00

Pleas.

United States of America, Southern District of Mississippi.

Circuit Court for said District, November Term, A.D. 1854.

JAMES BROWN, plaintiff,
v.
WM. H. JOHNSON, defendant.

And the said defendant, by his attorney, comes and defends the wrong and injury when, &c., and says that he did not undertake or promise in manner and form, as the said plaintiff has above thereof complained against him, and of this he puts himself upon the country.

J. S. YERGER,
Attorney for Defendant.
EUSTIS & BURWELL,
P. Q.

Plaintiffs do the like.

And for further plea in this behalf the said defendant says, that

the said plaintiff his action aforesaid ought not to have or maintain against him, because he says that the said several supposed causes of action in the said plaintiff's declaration mentioned, did not nor did any or either of them accrue to the said plaintiff within six years next before the commencement of this suit in manner and form as the said plaintiff hath above thereof complained against him, and this he is ready to verify, wherefore he prays judgment if the said plaintiff ought further to have or maintain his aforesaid action thereof against him.

J. S. YERGER,
Attorney for Defendant.

And for further plea in this behalf the said defendant says, that the said plaintiff, his action aforesaid ought not to have or maintain against him, on the *the* sixth count of said declaration, because he says that the said several supposed causes of action in the said sixth count of said plaintiff's declaration mentioned, did not, nor did any or either of them accrue to the said plaintiff within three years next before the commencement of this suit, in manner and form as the said plaintiff hath above thereof in the sixth count of his declaration complained against him, and this he is ready to verify, wherefore he prays judgment if the said plaintiff ought further to have or maintain his aforesaid action thereof against him.

J. S. YERGER,
Attorney for Defendant.

Replication.

JAMES BROWN, plaintiff,
v.
W. H. JOHNSON, defendant.

And for replication to the plea of the said defendant, by him secondly above pleaded, the said plaintiff says, precludi non, &c., because he says that the said causes of action in his said declaration mentioned, did accrue to him the said plaintiff within six years next before the commencement of this suit, and of this he prays the country may inquire, &c.

EUSTIS & BURWELL,
P. Q.

And for a replication to the plea of said defendant, by him hereby above pleaded, the said plaintiff says, precludi non, &c., because he says that the causes of action in the sixth count of said declaration did accrue to said plaintiff within three years next before the commencement of this suit, and of this he prays the country may inquire, &c.

EUSTIS & BURWELL.

Afterwards, to wit, at the November term of the court first aforesaid, to wit, on the twenty-second day of May, A.D. 1860, until which time this cause was regularly continued, came the parties aforesaid by their respective attorneys, and a jury being called came, to wit, J. L. Morris, Jas. McRae, W. D. King, E. Huston, E. Jones, N. Morrison, M. C. Cheatham, Calvin Tilly, W. F. Gartley, J. H. Burrus, W. H. Simmons, and J. P. O'Reilly, who being duly impanelled, tried, and sworn the truth to speak concerning the matters within contained.

Bill of Exceptions.

In the Circuit Court of the United States for the Ninth Judicial District of the United States, in the Southern District of Mississippi. May Term, A.D. 1860.

JAMES BROWN
v.
W. H. JOHNSON.

Be it remembered, that this cause came on to be tried before the Hon. Samuel J. Gholson, judge, and a jury, on the 23d day of May, 1860, and on said trial the plaintiff offered and read in evidence to the jury the five notes described in the declaration, in the words and figures following, to wit:

Copy.

1–4 May, 1847.

VICKSBURG, October 3d, 1846.

$2127 40.

On the first day of May, 1847, I promise to pay James Brown, or order, two thousand one hundred and twenty-seven dollars and forty cents, for value received, with interest at the rate of six per cent. per annum from the 1st day of May last.

W. H. JOHNSON.

1–4 May, 1848.

VICKSBURG, October 3d, 1846.

$2127 40.

On the first day of May, 1848, I promise to pay James Brown, or order, two thousand one hundred and twenty-seven dollars and forty cents, for value received, with interest at the rate of six per cent. per annum from the 1st day of May, 1846.

W. H. JOHNSON.

1–4 May, 1849.

VICKSBURG, October 3d, 1846.

$2127 40.

On the first day of May, 1849, I promise to pay James Brown, or order, two thousand one hundred and twenty-seven dollars and forty cents, for value received, with interest at the rate of six per cent. per annum from the 1st day of May, 1846.

W. H. JOHNSON.

1–4 May, 1850.

VICKSBURG, October 3d, 1846.

$2127 40.

On the first day of May, 1850, I promise to pay James Brown, or order, two thousand one hundred and twenty-seven dollars, and forty cents, for value received, with interest at the rate of six per cent. per annum from the 1st day of May, 1846.

W. H. JOHNSON.

1–4 May, 1850.

VICKSBURG, Oct. 3d, 1846.

$2127 40.

On the first day of May, 1851, I promise to pay James Brown, or order, two thousand one hundred and twenty-seven dollars and forty cents, for value received, with interest at the rate of six per cent. per annum from the 1st day of May, 1846.

W. H. JOHNSON.

Cr. $31 50; in Princeton money, $45.

The plaintiff's counsel then read to the jury in evidence the following agreement, to wit:

Facts agreed.

U. S. Circuit Court, Southern District of Mississippi, 1857.

JAMES BROWN
v.
WILLIAM H. JOHNSON.

It is agreed that the following statement shall be used as evidence in the case at law and in equity between the said parties, in the Circuit Court of the United States for the Southern District of Mississippi, to wit: That Brown Brothers & Co., of which firm said James Brown is a member, filed their original and amended supplemental bills in the Superior Court of Chancery of the State of Mississippi, against the Bank of Mississippi and others, on a claim for upwards of one hundred and forty thousand dollars; and in the progress of

the case the chancellor, on the 12th day of June, 1844, made an interlocutory decree, appointing Charles A. Lacoste receiver, in the words and figures of the copy hereto annexed, marked A., and which is to be taken as part hereof; that Charles A. Lacoste accepted the appointment of receiver, and executed bond, as required by said decree, on the 20th day of June, 1844; that Lacoste, as receiver as aforesaid, obtained possession, amongst other assets of the Bank of Mississippi, of several promissory notes of the said William H. Johnson, amounting in the aggregate to the sum of 10,616 05, all payable to and the property of said bank; that said Lacoste, after he received said notes as aforesaid, by John J. Guion and James M. Downs, as his attorneys, instituted suit in the Circuit Court of Warren County, Mississippi, and by Judge Meany, his attorney in the Circuit Court of Chicot County, Arkansas, on said notes, in the name of the Bank of Mississippi, for his use as receiver under said decree against Johnson. During the pendency of said suits on said notes, Robert Cochran, who was the agent of Brown Brothers & Co., met said Johnson, and he and said Johnson agreed that Johnson should take up the said notes sued on and held by said Lacoste as receiver aforesaid, and gave new notes therefor, payable to said James Brown, which said new notes should be for seventy cents on the dollar of the old notes, and interest, the new notes to be secured by mortgage. That Johnson, under said agreement, made and executed and delivered to James M. Downs or Robert Cochran the several notes and mortgage sued on in the said Circuit Court of the United States, and the said Downs dismissed the suit in the Circuit Court of Warren County, and delivered to said Johnson the notes therein sued on, together with the other notes of said Johnson received by said Lacoste from said bank, as receiver aforesaid. In said settlement with said Johnson, the amount of the debt due from said Johnson to the said Bank of Mississippi, and held by said Lacoste as receiver, together with interest, was $\$15{,}111\frac{08}{100}$ dollars, due on the 1st May, 1846, for which amount said Cochran gave said Lacoste an acknowledgment, or credit, on account of the judgment of Brown Brothers & Co. against said Bank of Mississippi. A copy of said Cochran's receipt or acknowledgment to said Lacoste, marked B., is hereto annexed, and made part hereof. It is agreed that Lacoste did not receive any money nor notes of the Bank of Mississippi from Brown Brothers & Co., on the claims of said bank against said Johnson, nor for any one else. Mr. Cochran, the agent of Brown Brothers & Co., agreed to enter a credit on their judgment against the Bank of Mississippi for the sum of $\$15{,}111\frac{08}{100}$ dollars, due on the 1st May, 1846. Lacoste, on the 8th of January, 1847, gave the following order: "Messrs. Guion & Downs will please hold, subject to the order of R. Cochran, Esq. (if not already given up by his authority to Mr. Johnson), the following notes, late the property of the Bank of Mississippi, to wit:

No. 217, W. H. Johnson et al. $1488; Cr. by 236 94.
218, W. H. Johnson et al. $1488.
219, do do 1488.
220, do do 1488.

"which I have placed in their hands for collection upon costs of suit being paid by defendants." The two notes, Nos. 221 and 222 Lacoste delivered to Mr. Cochran, and also Johnson's mortgage to the Bank of Mississippi, securing the whole series of notes. For the notes sued on in Arkansas, said Lacoste gave an order on Mr. Meany to deliver them to Guion & Downs, or to the order of W. H. Johnson, which Mr. Meany did. In the arrangement between Cochran & Johnson, Guion & Downs were acting as the attorneys of Cochran, or of Brown Brothers & Co. Mr. Lacoste did not know for what sums Johnson's notes were given to Brown, and did not see the notes nor the mortgage. Lacoste never saw Johnson, nor had any correspondence with him touching the settlement of his debt to the Bank of Mississippi; that was made by Mr. Cochran, as agent of Brown Brothers & Co., who gave to Lacoste the receipt or acknowledgment aforesaid; that passed between said Cochran and Johnson, subsequently was unknown to said Lacoste. The judgment of Brown Brothers & Co. against the Bank of Mississippi, was rendered in the Circuit Court of Washington County, on the 11th April, 1844, per $159{,}370\frac{49}{100}$ dollars. The market value of the liabilities of the Bank of Mississippi, during the year 1846, was about seventy cents on the dollar. It was agreed between said Cochran and Lacoste, though unknown to said Johnson, that Brown Brothers & Co. should allow a credit on their claim against said Bank of Mississippi for the amount of said Johnson's old notes, and the interest thereon, amounting to $15{,}111\frac{08}{100}$ dollars. The sole consideration for the notes sued on was as hereinbefore stated. That said Lacoste had no other claim, interest or right to the said notes of Johnson, in favor of said Bank of Mississippi, or power or authority to settle or adjust the same, than is given by the interlocutory decree aforesaid hereto annexed, marked "A.," and made part hereof. That afterwards, at the December term, 1852, of the said Superior Court of Chancery, the said Lacoste, as receiver, moved for leave to compromise, on the part of the Bank of Mississippi and the said complainants, Brown Brothers & Co., with the various debtors to the Bank of Mississippi, and for leave to apply the sums received on such compromises to the credit of said claim of Brown Brothers & Co., against said Bank, if, on final hearing, the court should decide said case in their, Brown Brother & Co.'s, favor, which motion was submitted on the 25th day of February, 1853, and was overruled by the chancellor, on the 4th day of March, 1853, and the leave to make such compromises refused. That said case of Brown Brothers & Co. against the Bank of Mississippi was submitted to the chancellor, on briefs of counsel, at the Decem-

ber term, 1853, and on the 29th day of January, 1855, a decree was rendered therein, a copy of which is hereto annexed, marked "D.," and made part hereof.

That on the same day, to wit, the 29th day of January, 1855, the chancellor made an order in said cause requiring said Lacoste to return into court all the assets of the Bank of Mississippi which he received, and settle his accounts as receiver; a copy of said order is hereto annexed, marked E., and made part hereof. From said decree of the chancellor dismissing said Brown Brothers & Co.'s bill, and the order on said Lacoste to account, an appeal has been taken to the High Court of Errors and Appeals of the State of Mississippi, where the same is yet pending. The original bill of said Brown Brothers & Co., against the Bank of Mississippi and others, was filed in 1840, before they had obtained any judgment against said Bank of Mississippi. The supplemental bill was filed after the judgment had been obtained by Brown Brothers & Co., against the bank, and before the date of this transaction with Johnson. It is agreed that each party shall be allowed to introduce any additional proof, and also that any part of the record in the case of Brown Brothers & Co. against the Bank of Mississippi and others, in the Superior Court of Chancery of the State of Mississippi, that is competent, may be used on the trial of the above cases, without the production of the whole record.

H. S. EUSTIS,
A. BURWELL,
For Plaintiff.

J. S. YERGER,
F. A. MARSHALL,
For Defendant.

May 9th, 1855.

Exhibit B. to Statement of Facts.

Copy.

WILLIAM & JAMES BROWN & Co.
v.
THE BANK OF MISSISSIPPI.

Judgment in Circuit Court of Washington County, Mississippi, 8th April, 1844, $159,370$\frac{29}{100}$.

For value received, the undersigned, for and on behalf of said plaintiffs, transfers and assigns unto Thomas J. Likens, or bearer, four thousand three hundred and fifty-six $\frac{19}{100}$ dollars, of the above-named judgment, as cash, this 19th November, A.D. 1846.

$4,356$\frac{19}{100}$. (Signed) ROB. COCHRAN.

For value received, I assign in like manner, to Ambrose Knox, or bearer, fourteen thousand four hundred and sixty-three $\frac{80}{100}$ dollars of said judgment, cash 21 November, 1846.

$14,463$\frac{80}{100}$. (Signed) ROB. COCHRAN.

For value received, I assign in like manner to William H. Johnson, or bearer, fifteen thousand one hundred and eleven $\frac{8}{100}$ dollars, cash 1 May, 1846.

$15,111 08. (Signed) ROB. COCHRAN.

NATCHEZ, May 9th, 1855.

I, Charles A. Lacoste, receiver in chancery of the assets, &c., of the Bank of Mississippi, hereby certify that the foregoing is a copy of the original document now in my possession, and which is the paper referred to in my statement in writing in the case of J. Brown *v.* W. H. Johnson, in the U. S. Circuit Court, Southern District, Mississippi, as a receipt or acknowledgment given to me, as such receiver, by Rob. Cochran, agent of Brown Brothers & Co., in satisfaction of said Johnson's indebtedness to said bank, as cash, 1 May, 1846.

C. A. LACOSTE.

"*Exhibit A. to Statement of Facts.*"

Preamble.

Whereas, it is the opinion of this board, that on account of the extraordinary depression in trade, commerce, and the monetary affairs of both England and the United States, and particularly of this State, and in consequence of the entire loss of confidence in the bank paper, and the banking institution of this State (which is likely to continue for years), it is no longer either for the interest of the stockholders or to the advantage of the community that they should continue in existence.

BANK OF MISSISSIPPI,
PRINCETON, May 26, 1840.

We, the undersigned committee appointed to burn the notes of this institution, do certify that we met at the banking-house, the 25th inst., and this day, and did burn and destroy of the issues of the Lake Washington and D. C. Railroad and Banking Company two hundred and eighty thousand, five hundred and twenty dollars, and of the issues of the Bank of Mississippi forty thousand dollars of the denomination, as at foot.

W. S. SCOTT,
C. R. BASS,
THOMAS GAINS,
PHILIP A. COCKS.
Committee.

Bank of Mississippi.

335	100s.	33,500
130	50s.	6,500
		$40,000

Lake W. & D. C. R. R. and Bkg. Company.

2433	5s.	12,160
6214	10s.	62,140
4791	20s.	95,820
1490	50s.	74,500
359	100s.	35,900
		$280,520

Resolved 1*st.* That the cashier is hereby authorized and directed to transfer to Brown Brothers & Co., with the consent of the debtors, any of the bills receivable of the bank in payment and liquidation of the debt due by the bank *due by the bank* to them in lieu of cash, and he is further directed to allow the said firm of Brown Brothers & Co., for receiving the bills as aforesaid, a premium not exceeding fifteen per cent. on the amount received.

Resolved 2*d.* That D. F. Blackburne, Jno. G. Cocks, and Jno. L. Chapman, be and they are hereby appointed agents or commissioners, on the part and in behalf of the Bank of Mississippi, for the purpose mentioned in the first resolution, and that this board does hereby delegate to them and invest in them, or a majority, full powers to arrange, compound, and finally settle, with Brown Brothers & Co., or their authorized agent, the claim which they hold against this bank.

Resolved 3*d.* That in order to enable the said agent, or commissioners, fully and completely to discharge the duties imposed upon them by the secure resolution, this board does hereby authorize and empower them to arrange, compound, and settle with the debtors to this bank, in such manner, and upon such terms, as they may deem the most conducive to the interest of the bank, and to the accomplishment of the object for which they were appointed, and that all assets, whether in the shape of bills, bonds, notes, real or personal estate, which may come in their possession or control by virtue of any such settlement with the debtors of the bank, may be used by them in liquidation of the said claim of Brown Brothers & Co., and they, the said agents and commissioners, are hereby fully authorized and empowered to transfer and convey all such assets aforesaid to Brown Brothers & Co. in settlement of their said claim, in as full and ample a manner, as this board of directors could, or can of right do, and the cashier is hereby directed to hand to the commissioners any assets and property upon such respect this resolution.

Resolved 4*th.* The said agents or commissioners be and they are hereby allowed a reasonable compensation for their services, to be paid at the close of their negotiation, whether successful or unsuccessful.

Resolved 5*th.* That the cashier be requested to furnish the said

agents or commissioners a certified copy of the preamble and resolutions, signed by the president and cashier, and sealed with the seal of the bank, to be used by them as credentials, and power of agency from this bank, in their negotiation with Brown Brothers & Co., or their accredited agent.

Resolved, That the cashier be required to honor and pay any draft or check made by the said commissioners.

"*Exhibit E. to Statement of Facts.*"

And afterwards, to wit, on the twenty-ninth day of January, A. D. 1855, the following order was entered upon the minutes of this court in the within entitled cause, No. 2873, in the words and figures, to wit:

BROWN, BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI. } 2873.

Upon motion of the defendants in the above-stated cause, and after argument had therein in presence of counsel upon both sides, the chancellor, being fully advised thereof, "It is ordered, adjudged, and decreed that Charles A. Lacoste, the receiver heretofore appointed by this court in said cause, appear, on or before the next term of this court, after a service of a copy of this order, before this court, and render a full, true, complete, and perfect account of his receivership herein, and of the state and condition of the assets of the Bank of Mississippi, which came to his hands as such receiver, and that he bring into court, all notes, bills, choses in action, and moneys, and all other proper choses in action, and assets of the Bank of Mississippi, which came into his hands, and the proceeds thereof, as well as all securities, notes, bonds, liens, mortgages, judgments, moneys, &c., as he may taken and received, to secure in payment of any of said liabilities which came into his hands, and also all notes of said bank, and all books, papers, and everything which came to his hands, as such receiver, in this cause, of and during the continuance of his trust; and it is further ordered, adjudged, and decreed, that after the full and satisfactory accounting of said Lacoste, and compliance with this order, that said Lacoste be discharged from said office and trust of receiver, and that the interlocutory decree appointing him to be annulled and vacated.

Exhibit "D.," to agreed Facts.

And afterwards, to wit, on the said 29th day of January, A.D. 1855, the following order decree was entered on the minutes of said Superior Court of Chancery, in this cause, to wit:

BROWN BROTHERS & CO.
v.
BANK OF MISSISSIPPI et al. } 2873.

Be it remembered, that this cause coming on to be heard before the Honorable Charles Scott, chancellor, &c., in the presence of counsel upon both sides, upon the demurrer of D. F. Blackburn and others, and upon motion of other defendants in said cause, and after argument had thereon, and by the court fully understood, and it being the opinion of the court that the questions of law, raised by said demurrer, are in favor of the said defendants demurring. It is ordered, adjudged and decreed, that said demurrer be sustained, and the said bills as to said defendants be dismissed, and upon inspection of the record in said cause, it appearing to the satisfaction of the chancellor that this court has no jurisdiction of the same, to grant relief or proceed against any of said defendants. It is ordered, adjudged and decreed, that complainants' original and supplemental bills be dismissed, as to all proceeding against any of said defendants for relief, be that said cause be retained in this court for the purpose of proceeding against the receiver appointed in said cause, to enforce and close his account as receiver, and compel the return of the assets of the defendant, the Bank of Mississippi, or their proceeds, into this court. It is further ordered, adjudged and decreed, that said complainants pay the costs of this suit. And the complainants, praying an appeal from the foregoing decree, the same is granted to the next term of the High Court of Errors and Appeals, upon their entering into bond in the penalty of two hundred dollars, conditioned according to law, with H. J. Anderson as security, to be approved by the chancellor, within thirty days.

Superior Court of Chancery of the State of Mississippi.

I, Livingston Mims, clerk of said court, do hereby certify, that the above and foregoing three pages contain true and correct copies of certain resolutions, copied from the individual journal marked C. D., with the last report of C. A. Lacoste, rec'r, and of two orders or decrees copied from the minutes of said court, all in the cause of Brown Brothers & Co. *v.* The Bank of Mississippi et al., No. 2873, in said court.

[L. S.] Witness my hand and seal of said court, at Jackson, the 27th day of April, 1857.

L. MIMS,
Clerk.

The plaintiff then, by his counsel, offered and read in evidence to the jury the report of C. A. Lacoste, in the words and figures following, to wit:

Report of C. A. Lacoste.

To the Honorable Charles Scott, Chancellor of the State of Mississippi:

The report of C. A. Lacoste, appointed a receiver of this court, on the 12th day of June, A.D. 1854, in the case of Brown Brothers & Co. *v.* The Bank of Mississippi,

Shows to your honor, that on the 18th December, 1844, he filed a report and inventory, which inventory is marked Exhibit "A.," and to which he refers as a part hereof, and for information as to the the amount and character of assets which came into his hands under his appointment as receiver. He also begs leave to refer to the said report of the 18th December, 1844, to which said inventory of assets is attached for information concerning the settlement of certain amounts therein mentioned.

The undersigned also made a report to the June and December terms, 1845, and the June terms, 1846 and 1847, which he begs leave to refer to as a part hereof. The injunction against the collections by the bank, mentioned in those reports as dissolved by the Circuit Court of Washington County, was reinstated by the action of the High Court reversing said judgment, and the undersigned has, therefore, labored under great embarrassments and difficulties in attempting to perform the duties devolved on him, so much so, indeed, that he has been able to make no collections, except where amicable arrangements or compromises could be made with the debtors of said Bank of Mississippi. The assets embraced in his inventory or report, in December, 1844, and all the assets and arrangements or settlements, mentioned in his former reports hereinbefore referred to, are all embraced in the report and settlement which he now submits.

He respectfully represents unto your honor, as follows: That the paper or statement herewith filed, and marked No. 1, contains a recapitulation of all the assets which he received under his appointment, as shown by his inventory before referred to. By said statement No. 1, it will appear that he received the following assets:

1. Debts consisting of "long loans," amounting to $192,113 31.
2. Debts denominated "suspended debts," amounting $25,458 48.
3. Debts denominated "loans in suspense," amounting to $2450.
4. A note discounted, amounting to $610.
5. Cash account of the bank, amounting to $6268 18.
6. T. N. Endicott's note, amounting to $1000.
7. Special deposits in notes of the Bank of Mississippi, and certificates of deposit, amounting to $14,292 61.

8 and 9. Important papers and memoranda, having no pecuniary value.

10. Mortgages to secure the debts above mentioned, or a portion of the same.

11. Books, blank impressions, papers, and seal of the bank.

12. Assignments, or pledges of stock by the holders of the bank.

13. Redeemed notes of the bank, amounting to $24,155.

14. Notes and bills in suit, amounting to $103,156 34; by which is meant, that the books of the bank transferred to him showed that amount in suit.

15. Cotton pledges, amounting to $3337 03.

And subsequently to his inventory he received a bond of W. H. Johnson and others to the bank for $500, on certain conditions, which he herewith returns.

Of the first item mentioned in the recapitulation of $192,113 31, your receiver has settled and arranged, by compromise and otherwise, with the debtors, to the nominal amount of $148,814 55, and interest on the same to the nominal amount of $53,455 89, as shown by statement S., to which reference is here made. Said arrangements and settlements were necessarily made at a great loss on the nominal amounts of said assets, as hereinafter explained.

Statement S. shows the actual amount collected in notes and liabilities of the bank and otherwise. The balance of said sum of $192,113 31, viz., $43,298 76, was placed in the hands of attorneys for suit. A statement of the items constituting said last sum, and the attorney's receipt for the same, are herewith filed, in package marked "M.," and made part hereof. Said suits have, of course, not proceeded to judgment, as the bank has been under quo warranto.

Of the second item in the recapitulation, viz., $25,458 48, your receiver has settled with the debtors of the bank, $1275 34, in notes of the bank and interest on the same, $989 89, as seen by reference to statement "J.," herewith filed, and the balance of said sum, $24,183 14, or such portion of it as was not worthless, was put in suit; a statement of the items constituting said sum of $24,183 14, as herewith filed, and the notes or bills evidencing the same, where they were not put in suit, and the attorneys' receipts where they were not put in suit, in a package marked "N.," which is prayed to be taken as part hereof.

Of the 3d item in the recapitulation, $2450, loans in suspense, your receiver has settled the same with the debtor Z. Preston, at a great loss, as hereinafter explained. "See statement filed, J.," herewith.

Of the 4th item in the above recapitulation, note discounted $610. The said note is herewith returned into court, and with it evidence that it was not in fact a part of the assets of the bank. Said note and evidence are in the package marked "O.," which is prayed to be taken as part hereof.

Of the 5th item, indicated as cash account of the bank, $6268 18. This was a package representing the cash account of the bank, as stated in your receiver's report in 1844, containing various checks, receipts, &c., which are indicated in said report of 1844, and which are herewith returned to the court, except $1105, in notes of the

bank, with a statement of contents, which statement and contents are marked "P.," and filed herewith, in lieu of said $1105.

Your receiver files herewith receipts 3 and 4, and 11 and 12, of W. M. Willoughby, late cashier of said bank, for said $1105, paid to said Willoughby, as referred to in your receiver's first report, filed December, 1844.

Of the 6th item in said recapitulation, note of T. N. Endicott for $1000, your receiver settled the sum of $65. See settlement "J.," as hereinafter shown, and handed the note, with a balance of $935 due on it, to an attorney for suit, and the attorney's receipt for the same is contained in package "M.," hereinbefore filed.

Of the 7th item in said recapitulation, marked special deposit, $14,292 61. These, of course, did not constitute assets of the bank, but a statement, as herewith filed, marked "R.," which describes the said several deposits, and the disposition made of them, which is prayed to be taken as part hereof; and in said package "R." will be found the $1000, in notes of bank, being the special deposit of F. P. Plant.

Of the 8th and 9th items in said recapitulation, it has been already stated that they are important papers and memoranda, but of no pecuniary value, and are herewith returned to the court in two packages, marked "S. S." They are statements of settlements, and papers connected therewith, made by Willoughby, cashier, before the appointment of 3d receiver.

Of item 10th, mortgages, &c., a list of them are contained in his report of December, 1844. They have either been given to the parties with whom settlements were made, or placed in the hands of attorneys when the notes were put in suit. Being matters of record, it is only necessary herein to refer to them. Of the 11th item in said recapitulation, books, blank impressions, papers, and the seal of the bank, they are herewith returned to the court.

Of the 12th item of said recapitulation, your receiver reports that the same are not mentioned in the inventory and report returned in 1844; but he finds them amongst the papers of the bank, and herewith returns them to the court in package "T."

Of the 13th item of the recapitulation, indicated as "redeemed notes" of the bank, received from Commercial Bank of Natchez. Your commissioner reports that he received from the Commercial Bank the three packages marked "A.," two of which are sealed, and one unsealed. The unsealed package contains, of notes and certificates, the amounts indorsed thereon, viz., $4976 02, and the amount shown in the detailed statement of the Commercial Bank contained therein.

Of the unsealed packages, your receiver has never examined them, and returns them to the court as he received them. They were handed to him as containing a total of $197 45, making, with the unsealed package, $24,721 02.

Of the 14th item of the recapitulation, indicated as notes and bills,

in suit charged $103,756 34. (By word "charged," is intended, charged in the ledger of the bank.) Your receiver reports to your honor, that he returns into court, of the same notes and bills, amounting to $12,508 62, which will be seen by reference to Statement "V." and package "V.," which contains said notes and bills, for which the bank held the receipt of A. F. Smith, Esq., and which were returned to your receiver by said Smith, except the Butterworth note, for which said Smith gave an order on J. B. Coleman, a list of which notes and bills is found on last page of said Statement "V.," and they are believed to be valuable.

Of the same item, $103,756 34, your receiver returns to the court here the sum of $56,698 51, in receipts of attorneys, as follows: Said receipts will be found specified on the first page of the Statement V. herewith filed; said Statement V. is to be taken with the following explanation, that the two receipts of E. A. Meany therein mentioned, one for $1424 49, and one for $113 23, were given for two notes which had been placed in the hands of A. F. Smith by the bank, were delivered to your receiver, by Smith, in June, 1844, and by your receiver delivered to said Meany for collection; the receipts of Meany on said first page of E. and V., marked 27 and 28, are returned in package V., which is appended to, or accompany said statement V.

The receipts of Davis & Cox, per note of $1413, indicated on said first page of Statement V., was also given for a note which had been placed in the hands of A. F. Smith, and by him delivered up to your receiver in June, 1844, and by your receiver placed in the hands of Davis & Cox, attorneys; and their receipts are also returned with said Statement V., and is marked on page 1 of said statement as No. 26, and said receipt is filed with said V. in the package V. The receipts of said Smith in said page of Statement V., are found in Book A. B., filed herewith. The other receipts indicated, on the 1st page of Statement V., are those of Webster & Smith, and H. D. Manderville, Jr., and are not in fact receipts, but are marked in the soid Book A. B. of the bank as having handed to the said attorneys, and your receiver has never had any other knowledge or information in reference to the same, than what said Book A. B. furnishes.

In regard to the balance of said 14th item of $103,756 34, in said recapitulation, viz., $34,549 41, your receiver reports that the same was settled by him with the debtors by compromise, or otherwise, at a great loss, to be hereinafter explained, as will appear by reference to Statement K., herewith filed, and shows also the actual amounts collected by your receiver in liabilities of the bank, and otherwise.

Of the 15th item in said recapitulation, your receiver reports as follows: (The same is indicated in said recapitulation as cotton pledges, $3337 03.) He settled the same with the debtors of the bank in notes and other liabilities of the bank, and has charged himself in his general account, a statement to be hereinafter filed. He refers to

Statement I, hereinbefore filed, as showing the amount of principal and interest settled by him on said cotton pledges.

In regard to the amounts hereinbefore referred to, as settled by your receiver of the assets of the bank, your receiver reports as follows: He files herewith a general statement, marked Ex. No. 2, in reference to the same. By reference to said general statement, it will be seen that on the debtor side thereof your receiver has charged himself, 1st, with the sum of $150,096 47, as actually collected by him, on settlement or compromise of the assets mentioned in the first item of the recapitulation hereinbefore referred to as part hereof, and marked No. 1.

2d. With the sum of $18,674 76, as actually collected by him on settlement, or compromise of the assets mentioned in the 14th item of the recapitulation No. 1.

3d. With the sum of $2265 23, as actually collected by him on settlement of assets mentioned in the 2d item of recapitulation No. 1.

4th. With $4317 04, as actually collected on settlement of assets mentioned in the 15th item of said recapitulation No. 1.

5th. With $65, actually collected by him on settlement of the assets mentioned in the 6th item of said recapitulation.

6th. With $255, as actually collected on settlement and compromise of the assets mentioned in the 3d item of said recapitulation, making in all the sum of $175,673 50, total amount collected by him. And on the credit side of said general statement, Ex. 2, he has credited himself as follows:

1st. With $36,265, notes of bank taken up.

2d. With certificates of deposit taken up and redeemed, $2152 61.

3d. With $16,714 96, interest on the last two items, making in all, principal and interest, $55,132 57. He files herewith, in explanation of the last three items, statement marked A., which he prays to be taken as part hereof, and package of vouchers marked A., containing said bank notes, &c., which he returns to the court.

4th. He has also credited himself, in said general statement 2, with $7951 29 of credit balances appearing on the individual ledger of said bank, in favor of sundry parties, and which were absorbed in settlements made by your receiver, as he anticipated in his report of December, 1844.

5th. With $920 85, interest on the last sum, constituting a total of $8872 14.

6th. With $1000, which was credited on the books of the bank to suspense account, in favor of Joseph Egg.

7th. With $333 21, on the last item, which said last four items, principal and interest, were absorbed in settlements, and, as stated above, constituting a total of $1332 21.

In explanation of said last four items, your receiver files herewith Statement B., which he prays to be taken as part hereof, and refers to the books of the bank, which he returns herewith as vouchers for the same.

8th. He credited himself also with the account of W. M. Willoughby, amounting to $1732 35, inclusive to 18th May, 1853, the date of its settlement. As a voucher for 5th last item, he files paper "C.," which he prays to be taken as a part hereof.

9th. Also with $89,763 94, settled with Brown Brothers & Co., and others claiming under the judgment against the bank, and as vouchers for which your receiver files herewith a package enveloping receipts and assignments, and numbered from 1 to 8, said package marked D., and with the sums of $179 35 and $4879 16, $700, $704 09, and $175 fees paid to attorneys for services rendered to me as receiver, making a total of $6637 60. For the last sum, $6637 60, he files herewith packages of receipts marked E., which he prays to be taken as part hereof.

10th. With $1000 allowed to T. W. Clay, as clerk of receiver, by order of court. Clay's receipt herewith filed marked "F."

11th. With $880, rent of office, which receiver was compelled to have at $80 per year.

12th. With travelling expenses for 11 years, $325.

13th. With costs of court paid by your receiver, $49 0090. For the last item, $490 90, he files package of vouchers marked "G."

14th. With $150 for postage, despatches, stationery, certified copies, and other expenses, of which vouchers will be produced if necessary.

15th. With $9356 39 as salary or compensation for his services. Your receiver files herewith, as Exhibit "Z.," an account for his services as receiver, in which the said last item of $9356 39 is embraced, and he only puts the amount $9356 39 (which is only a portion of which in justice he submits he ought to receive), in the general statement, to make his debits and credits balance each other. The sum total of the credits, to which your receiver submits he is entitled, is $175,673 50, which balances the amount for which he is chargeable, on collections, settlements, &c.

Your honor will perceive that your receiver has been compelled, by compromises and otherwise, to make large sacrifices in his attempts at collection and settlement of the *Fund* intrusted to him, or else wholly to fail in the purpose for which he was appointed, and permit the whole of said fund to be sacrificed for the want of funds to pay current expenses, &c.

He represents to your honor that shortly after his appointment, a writ of quo warranto at the suit of the State was issued against said Bank of Mississippi, and an injunction against collection, which was pending until a very recent period, so that your receiver has not been able, notwithstanding the efforts he made, to realize a single dollar of the assets of said bank by legal collections, and unless he had compromised with the various debtors, would have wholly failed in performing the duties intrusted to him; acting therefore in good faith, and believing that he had the power to do so, and with the consent of complainants, who as shown by the answer of the defen-

dant the Bank of Mississippi was the principal creditor of the bank, and in fact the only creditor, with the exception of the note-holders and depositors to a small extent, whose claims have been almost if not entirely extinguished by your receiver, and as your receiver believed with the assent and approbation of all parties, he proceeded by compromises and settlements with various persons, debtors to the bank, instead of collections by law, which were wholly impossible, to settle the various amounts, mostly nominal, as hereinbefore shown, and to the extent of those settlements to part with the notes and bills and other evidences of debt of the bank. Many of said *settlements* were made with the directors themselves, who were among the principal debtors of the bank; and all parties *in* interest, as he believes, had full notice that such settlements were being made, was any objection from any source whatever interposed to the same.

Your receiver was absolutely compelled under the above circumstances, and for the reasons above stated, to make considerable sacrifices of the nominal amounts of the indebtedness of said bank, and for the additional reason that in many cases the debtors were insolvent, and in every case struggled, by every device which the law admitted, to defeat and hinder and delay collection.

Your receiver is advised that if he did not have the power to make said settlements and compromises, the assets so by him arranged and disposed of would still remain the property of the bank, but that he is unable to return the same into court, for the reason that he is not in possession of the same, having parted with such possession in good faith, and in the discharge as he supposed of his duty, and that the court will not require of him a legal impossibility by compelling him to return what he has no control of.

He has executed a receiver's bond in the sum of $300,000 with undoubted security, in the event the rights of any parties to said assets or in them have been injured. He is advised that in his account he is only charged with the sums actually received by him, and that only in case parties holding him to account ratify or affirm the settlements and arrangements under which he received said sums (for in any other event), if said compromise and settlements were without power, the assets so arranged still remain the property of the bank, and your receiver would be liable to the bank on his bond for having parted with their possession.

Your receiver reports further to your honor, that in the statement marked 2, he has credited himself with the sum of $89,763 94, and in the paper or package marked D., and the receipts and assignments therein contained from 1 to 8 as vouchers for said item, it will be seen that said credit is based on settlements made by your receiver with Brown Brothers & Co., the principal creditors of the bank, in such settlements, the paper or assets in your receiver's hands were used at *their former nominal* value. Your receiver states that in the answer of the defendant the Bank of Mississippi to the bill of com-

plaint in this cause, said defendant admitted its indebtedness to said Brown Brothers & Co. to a very large amount, and showed that the said Brown Brothers & Co. owned nearly all the liabilities of the bank, nor did said bank attempt to make and defence against said indebtedness, so far as the same was admitted to be due by it to the amount of.

In addition, this honorable court has decided the principle of law and equity, that Brown Brothers & Co. and the other creditors are entitled to the assets of the bank, by the very fact of the appointment of a receiver, and in the view thus entertained by the court nothing could have *prevented* that appropriation but the denial of indebtedness, which the answer of the bank admitted, and such decree was unappealed from and unreserved. Many of said settlements and arrangements, on which said item of $89,763 94 credit to your receiver is bound, were made by Brown Brothers, & Co., the complainants, with the *directions* themselves of the bank, which they had full notice. Transfers were made by complainants in many instances, as will be seen, of portions of the judgment, on the faith of which your receiver gave up the assets so settled and arranged, believing in law and equity he was bound to do so.

In other cases the debtors of said bank, amongst them some of the directors, made compromises with complainants, and in such cases your receiver delivered to complainants the evidences of indebtedness of such debtors on obtaining a credit of the full amount of such assets on the judgment of complainant, as will be seen by reference to package D. In all this your receiver acted in good faith, in the exercise of powers he honestly believed to be vested in him, nor does any injury (even if he had no such power) accrue to the bank, which they obtained on appropriation of a portion of its assets, without the expense or trouble of litigation to the payment of an acknowledged debt, at the nominal or fair value of such assets. Your receiver further shows, that although such proceedings were well known to said bank and its *direction*, yet no objection was made to the same. He shows further that he reported to your honor, in his report of June 22d, 1847, a settlement and arrangement of a large amount of assets in the manner above stated through the complainants, and paid on their judgment, and that no exception was ever taken to such proceeding, nor is any now likely to be taken by said bank, though he fears that the debtors of the same may attempt to do so.

Your receiver shows that said bank has been, since 1843 to 1844, to all intents and purposes dead; that the directors since that time have had no meeting or organization; that its corporate powers have been abandoned; that the quo warranto on the part of the State was pending many years against it, prosecuted as your receiver believes by the debtors, and *amongst them some of the directors*, and undefended except by your receiver, who was advised by his counsel that a successful defence could not be made to said quo warranto, and that

when tried, it would result in judgment of forfeiture, under which all its assets would be exposed to public sale and sacrificed, and thereupon your receiver never brought the same to trial. That it has since been dismissed, as your receiver is informed, by the district attorney, under a suggestion made to him, that the charter had expired by limitation of law. On this subject your receiver refers to the "acts of the legislature, at the sessions of 1836 and 1838," and passed respectively on the 16th and 26th days of February of those years, containing the charter and the amended charter of said bank, and the act of February 21st, 1840, to be found at page 19 of the printed acts of that year, *in* and states that under the last act, as he is informed, seven of the directors, in the time limited by said act, met and passed a resolution to accept the same, and notified the governor of the State thereof, and he submit the question whether the bank is not in fact out of existence. But be this as it may, he says that by all parties, creditors, debtors, and directors, it was considered as having no further interest in the controversy in the case, and that the whole controversy was between the complainants and debtors of said bank, and if galvanized into apparent monetary life it will be only as the instrument of the purposes of others, debtors of said bank to subject thus your receiver to a responsibility not thought of or dreamed of by it and himself at the time of the transactions herein detailed.

Your receiver files herewith in connection with the directors' journal, hereinafter referred to as Exhibit C. D., two letters, one of Moseley, cashier of the bank, with the certificate of A. G. Brown, governor of the State at the time of said certificate, and one letter of A. G. McNutt, then governor of the State, in answer to the former letter and as before said journal, whether said bank is not out of existence.

Your receiver files herewith an account for the services rendered in said receivership, which he prays your honor to allow him. The same is marked "Z.," and prayed to be taken as part hereof.

He returns with this report into court all the assets in his hands indisposed of, and which are described in the statements and exhibits herein referred to, and also the circulation of said bank which he has taken up, and which, if not all, is nearly all of said circulation that was issued by said bank. He further shows that the only other indebtedness of said bank of any magnitude, is the debt due complainants.

Your receiver files herewith the directors' journal of said Bank of Mississippi, which he received from the cashier of said bank shortly after his appointment, and which he knows to be the authentic journal of the proceedings of the directors of said bank, and prays the same to be taken as part of this report. It is marked .

By reference to said journal, which your receiver prays it will be found, as he is advised, that he was fully authorized to make the compromises and settlements hereinbefore referred to, and to make the appropriations which he did make to the payment of the debt of

complainants, and that many of the most important settlements, arrangements, and compromises which he has made were with the directors of said bank.

Your receiver states finally that in those cases where he made compromises and settlements, there was no actual loss or injury to the right of the bank or others, for the reason that in those cases it was impossible to make collections by law. It will also appear that in many instances where the notes or bills were appropriated to payment of complainants' debt, in every instance with the consent of the debtors, the said notes and bills so appropriated were notes of the directors of the bank.

In all, as your receiver believes, there were nine out of eleven of the directors of said bank who were parties either to said appropriations or compromises and settlements, and assenting to them.

Finally, your receiver states that he files this report and hands into the court here the assets mentioned herein, for the purposes of complying with the order of the court in the premises, but he submits to the court the question, whether as the court did not have jurisdiction to said cause, and the bill of complainants was dismissed for that reason, the appointment of your receiver was not void, and whether your honor can pronounce any judgment in the premises either charging or exonerating him from liability in regard to said assets, or decreeing the right or title to said assets in favor of any facts.

C. A. LACOSTE.

Sworn to and subscribed before me, April 7th, 1857.

L. MIMS,
Clerk.

The State of Mississippi.

Superior Court of Chancery of the State of Mississippi.

I, Livingston Mims, clerk of said court, in and for said State, do hereby certify that the preceding fourteen pages contain a full, true, and correct copy of the report of C. A. Lacoste, receiver, &c., filed herein on the 7th of April, 1857, in the cause entitled Brown Brothers & Co., against the Bank of Mississippi et als., No. 2873, as the same remains on file in said court.

Witness my hand and the seal of said court hereunto
[L. S.] annexed, at office in the city of Jackson, this the 2d day of May, A. D. 1857.

L. MIMS,
Clerk.

The plaintiff by his counsel offered to read in evidence to the jury certain resolutions of the Bank of Mississippi, with the certificate of J. T. Sims, clerk, &c., but upon motion of defendant by his counsel the same was excluded from the evidence, and not permitted to be

read by the court to the jury, which ruling and decision of the court the plaintiff by his counsel then and there immediately excepted.

The plaintiff then offered and read the mortgage deed of defendant in the words and figures following, to wit:

Mortgage Deed of Defendant.

This indenture, made and entered into this third day of October, in the year of our Lord one thousand eight hundred and forty-six, between William Henry Johnson and Mary his wife, of the county of Warren, and State of Mississippi, of the first part, and James Brown, of the city of New York, of the second part, witnesseth, that whereas the said William Henry Johnson is justly and legally indebted to the said James Brown in the sum of ten thousand six hundred and thirty-seven dollars ($10,637), as evidenced by his several promissory notes of even date herewith, and each for the sum of two thousand one hundred and twenty-seven dollars and forty cents ($2127 40), payable on the first days of May, A. D. 1847, 1848, 1849, 1850, and 1851, all bearing interest at the rate of six per centum per annum from the 1st day of May, 1846, and payable to the order of said James Brown for vaulue received. Now in consideration of said sum of ten thousand six hundred and thirty seven dollars, the said William Henry Johnson and Mary his wife, do grant, bargain, sell, and convey, unto the said James Brown, the following described real estate, to wit: fractional section three, lots one, two, and three, in section two: the west half of the northwest quarter, the northeast quarter, and the east half of the northwest quarter of section nine; the west half of the northwest quarter of section ten; all in township seventeen, of range three west, containing seven hundred and seventy-nine acres and ninety-five hundredths of an acre. Also the northeast quarter of section ten, and the northwest quarter of section eleven, and fractional section one, all in township seventeen, of range three west, except seventy-three and eleven hundredths acres of the last-described tract, conveyed by Johnson and wife Ann Lake, on the 30th January, 1846, as by deed of record, in book U. in Warren County, page 238, will fully appear. And also the following personal estate, to wit, negro slaves for life: Charles, aged thirty years; January, aged thirty-five years; Carter, aged twenty-six years; Tom, aged twenty-four years; David, aged twenty-eight years; Ben, aged twenty-eight years; Roman, aged twenty-four years, Hosea, aged thirty years; Luke, aged twenty-five years; Anthony, aged thirty-five years; Moses, aged thirty-eight years; Lewis, aged forty years; Edmund, aged thirty years; Hartwell, aged thirty-eight years; Cæsar, aged thirty years; Joe, aged thirty-five years; Burwell, aged twenty years; Allen, aged forty years; Napper, aged thirty years; Jim, aged twenty years; Chub, aged twenty years; Kage, aged eighteen years; John, aged fourteen years; Arthur, aged twelve

years; Dennis, aged twelve years; Sophia, aged twenty-eight years; Mahala, aged twenty-eight years; Violet, aged thirty years; Amy, aged twenty years; Minna, aged twenty-five years; Hagar, aged twenty-two years; Jane, aged thirty years; Mourning, aged eighteen years; Parmelia, aged eighteen years; Mary, aged forty years; Teana, aged thirty-eight years; Lizzy, aged forty years; Maria, aged forty-five years; Rose, aged twenty-eight years; Polly, aged thirty-eight years; Betsey, aged sixteen years; Harriett, aged seventeen years; Annie, aged twenty-one years; Happy, aged eight years; Virgil, aged four years; Mary, aged eight years; Louise, aged four years; Elizabeth, aged three years; Milly, aged six years; Riley, aged eight years; Pennis, aged four years; Sarah Ann, aged seven years; Aaron, aged four years; Julius, aged eight years; Essick, aged seven years; Eliza, aged three years; Green, aged two years; William, aged one year and a half; Francis, aged one year and a half, and seven infants not named; the above described real and personal property being the same now in the possession of the said William Henry Johnson, on the Yazoo river, in the county of Warren. To have and to hold the foregoing described real estate, together with the appurtenances and improvements, and the said negro slaves for life, together with their natural increase, unto the said James Brown, his heirs and assigns, forever. And the said William Henry Johnson and Mary his wife, do covenant, promise, and agree, to and with the said James Brown, that they will warrant and defend the title to said real and personal estate to him, his heirs and assigns, against the claim of all persons whomsoever, either at law or in equity.

The condition of the above indenture, however, is such, that if the said William Henry Johnson shall punctually pay and discharge the several notes herein described as they respectively fall due, together with all legal interest thereon, then this indenture to be null and void, otherwise to remain in full force and effect, this being intended as a mortgage to secure the punctual payment of the several notes hereinbefore described.

In testimony whereof the said William Henry Johnson, and Mary, his wife, have hereunto set their hands and seals the day and year first hereinabove written.

W. H. JOHNSON. [SEAL.]
M. B. JOHNSON. [SEAL.]

The State of Mississippi, Warren County.

Personally appeared before me, Nathan G. Bryson, a justice of the peace in and for said county, the above-named William Henry Johnson, and Mary B. Johnson, his wife, who acknowledged that they signed, sealed, and delivered the foregoing deed on the day and year therein mentioned, as their act and deed. And the said Mary

B., wife of the said William Henry Johnson, being by me privately examined, apart from her husband, acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband.

Given under my hand and seal this 3d day of October, A.D. 1846.

N. G. BRYSON, [SEAL.]
J. P.

State of Mississippi, Warren County.

I, Alfred H. Rowlett, clerk of the Probate Court of Warren County, do hereby certify that the foregoing deed and certificate were filed for record in my office on the 12th day of October, 1846, whereupon I have made the same of record in Book U., pages 386, 387, and 388.

Given under my hand and seal of office this 3d day of
[L. S.] November, A.D. 1846.

A. H. ROWLETT,
Clerk.

The defendant, under the agreement of counsel before set forth, then offered to read in evidence, and was permitted to read to the jury, parts of a complete transcript of the suit of Brown Brothers & Co. *v.* The Bank of Mississippi, which transcript was duly certified, and then produced in court. The parts of the transcript so offered and read in evidence are in the words and figures following, to wit:

Petition of Robert Cochran.

Superior Court of Chancery of Mississippi.

BROWN BROTHERS & Co. }
v.
THE BANK OF MISSISSIPPI et als. }

To the Honorable Stephen Cocke, Chancellor, &c., &c.

Robert Cochran, the agent of the complainants in this cause, begs leave to state to your honor that he has been under the necessity of advancing the sum of sixty-three hundred and eight $\frac{51}{100}$ dollars, as appears by the accompanying account to C. A. Lacoste, receiver appointed in this case, to enable him to carry on the current business of his office, the particulars of which will appear by reference to said account, there being no funds among the assets of said bank available for the purpose, and with a view to avoid the sale of the bank notes in the hands of said receiver.

Your petitioner in behalf of his principals, the said complainants therefore respectfully prays, that your honor allow the amount of the said account, with the addition of thirty-five per centum thereon (the current rate of discount on the circulation of the said bank

having been all paid in the latter), as a claim against the said bank, so that he may avail himself of any opportunity that may offer to dispose of the same to the debtors of the bank, and thus reimburse himself.

And as in duty bound your petitioner will ever pray, &c., &c.

ROBERT COCHRAN.

Order of Court.

And on the 14th day of June, 1852, the following order was entered on the minntes of this court in this cause, to wit:

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI et al.

Ordered, that defendants W. Penrice and D. F. Blackburn plead, answer, or demur to the complainants' bill by the next rule day of this court, and that in default thereof that the several allegations of said bill be taken for confessed as to them.

Order of Court.

And on the 4th day of March, A.D. 1853, the following order was entered on the minutes of this court, in this cause, to wit:

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI et al.

Ordered, that the motion herein for leave to the receiver, C. A. Lacoste, to compromise on the part of the Bank of Mississippi, and of the plaintiffs to compromise with the various debtors to the Bank of Mississippi, and for leave to apply the amounts received by such compromise to the credit of the debt of complainants, &c., be and the same is hereby overruled.

Order of Court.

And on the 19th day of January, A.D. 1855, the following order was entered on the minutes of this court in this cause, to wit:

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI et al.

Submitted on Motion.

Order of Court.

And on the 27th day of January, A.D. 1855, the following order was entered on the minutes of this court in this cause, to wit:

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI.

Upon motion of the defendants in the above-stated cause, and after agreement had therein in presence of counsel upon both sides, the chancellor being fully advised thereof, it is ordered, adjudged, and decreed, that Charles A. Lacoste, the receiver heretofore appointed by this court in said cause, appear on or before the next term of this court, after the service of a copy of this order before this court, and render a full, true, complete, and perfect account of his receivership herein, and of the state and condition of the assets of the Bank of Mississippi, which came into his hands as such receiver; and that he bring into court all notes, bills, choses in action, and moneys, and all other property, choses in action, and assets of the Bank of Mississippi, which came into his hands, and the proceeds thereof, as well as all securities, notes, bonds, liens, mortgages, judgments, moneys, &c., as he may have taken and received, to secure, or in payment of any of said liabilities which came into his hands, and also all notes of said bank, and all books, papers, and everything which came to his hands as such receiver in this cause, of and during the continuance of his trust. And it is further ordered, adjudged, and decreed, that after the full and satisfactory accounting of said Lacoste, *an* compliance with this order, that said Lacoste be discharged from said office and trust of receiver, and that the interlocutory decree appointing him be annulled and vacated.

And on the 29th day of January, 1855, the following order was entered on the minutes of this court in this cause, to wit:

BROWN BROTHERS & Co.
v.
BANK OF MISSISSIPPI et als.

Be it remembered, that this cause coming on to be heard before the Honorable Charles Scott, chancellor, &c., in the presence of counsel on both sides, upon the demurrer of D. F. Blackburn and others, and upon motion of other defendants in said cause, and after argument had thereon, and by the court fully understood, and it being the opinion of the court that the question of law raised by said demurrer are in favor of said defendants demurring, it is ordered, adjudged, and decreed, that said demurrer be sustained, and the said bills as to said defendants be dismissed, and upon inspection of the record in said cause, it appearing to the satisfaction of the chancellor

that this court has no jurisdiction of the same to grant relief, or proceed against any of said defendants:

It is ordered, adjudged, and decreed, that complainants' original, amended, and supplemental bills, be dimissed as to all proceeding against any of said defendants for relief, but that said cause be retained in this court for the purpose of proceeding against the receiver appointed in said cause, to enforce and inclose his account as receiver, and compel the return of the assets of the defendant, the Bank of Mississippi, or their proceeds, into this court. It is further ordered, adjudged, and decreed, that said complainants pay the costs of this suit.

And the complainants, praying an appeal from the foregoing, decree, the same is granted to the next term of the High Court of Errors and Appeals, upon their entering into bond in the penalty of two hundred dollars, conditioned according to law, with W. P. Anderson as security, to be approved by the chancellor within thirty days.

And on the 8th day of February, A.D. 1855, the following order was entered on the minutes of this court in this cause, to wit:

BROWN BROTHERS & CO.
v.
THE BANK OF MISSISSIPPI.

It is ordered, adjudged, and decreed, that the order and decree of this court, made on the 29th day of January, A.D. 1855, requiring the receiver, Lacoste, to report at the next term of this court, be modified and repealed so far as the same discharges the said Lacoste from his receivership, and vacates the interlocutory order of this court appointing said Lacoste receiver, and the complainants now file their appeal bond herein, which is approved.

Mandate of High Court E. and A.

The State of Mississippi to the Honorable the Superior Court of Chancery, greeting:

Whereas, at a term of our High Court of Errors and Appeals, begun and held at the capitol, at Jackson, on the 3d day of October, A.D. 1856, a decree was rendered by our said High Court on the 2d day of December as follows, to wit:

BROWN BROTHERS & CO., appellants,
v.
THE BANK OF MISSISSIPPI. } 7341.

Comes Mr. Marshall, of counsel for the appellees, and moves the court here to reconsider and set aside the last judgment entered in this cause, and permit the judgment first entered to stand; and said motion being argued by Mr. Marshall, of counsel for appellees, and this court being now of opinion that said judgment and decree first

entered by the court herein, on the 10th day of November, A.D. 1856, was correct and proper; and that said last order herein, on the 29th day of November, A.D. 1856, ought now to be set aside and rescinded, and said first judgment restored.

It is now accordingly considered, and so ordered, adjudged, and decreed, that the decree of said Superior Court of Chancery, rendered in this cause at the December term thereof, in the year 1854, and on the 29th of January, A.D. 1855, be and the same is hereby affirmed.

And it is further considered, and so ordered, adjudged, and decreed, that the appellees do have and recover of the appellants and William M. W. Cochran, and Warren P. Anderson, sureties in the appeal bond, the costs of this cause in the court below, and in this court expended, &c., to be taxed, &c.

You are therefore commanded that such execution and further proceedings be had in said cause as according to right and justice, the decree of our said High Court, and the law of the land, ought to be had.

Witness the Honorable C. P. Smith, presiding judge of our said High Court, and seal of said court hereto affixed, at office, at Jackson, this 8th day of December, A.D. 1856.

[SEAL.]

GEORGE T. SWANN,
Clerk.

By SAMUEL LIVINGSTON,
Deputy Clerk.

Order of Court.

And on the 11th day of December, A.D. 1856, the following order was entered on the minutes of this court in this cause, to wit:

BROWN BROTHERS & Co.
v.
BANK OF MISSISSIPPI. } 2873.

Ordered, that Charles A. Lacoste, receiver, make his report to this court by the 2d day of March next, and that he deliver and pay into court by the same day all moneys heretofore collected or received by him as receiver; and also that he deliver into said court all notes, bills of exchange, bills receivable, bonds, or other securities, and all choses in action of any kind received by him as receiver, and also all notes, bonds, or bills payable, choses in action, and securities of any kind that he may have taken or received by way of substitution or in payment or compromise of any of the debts, notes, choses in action, or securities of any kind, which came into his hands as receiver.

On the 7th day of May, 1857, the following exceptions to the report of C. A. Lacoste were filed in the Superior Court of Chancery, to wit:

Superior Court of Chancery, State of Mississippi.

BROWN BROTHERS & Co.
v.
BANK OF MISSISSIPPI. } No. 2873.

Defendant, the said Bank of Mississippi, excepts to the report of Charles A. Lacoste, receiver, filed herein on the 7th day of April, 1857, for the following reasons, to wit:

1st. Because said Lacoste has not returned into court, as he was required to do, the notes, bills receivable, and other choses in action belonging to said bank, which came into his hands as receiver, denominated long loans, referred to in exhibit marked "M." with his report, and which, as used in said report, as never collected or settled by him.

2d. Because he has not returned into court the mortgages given to secure the payment of said notes referred to in Exhibit "M."

3d. Because he has not returned into court the notes and other choses in action numbered 1, 2, and 13 of claims called "suspended debt, referred to in exhibit marked 'W.' filed with said report."

4th. Because he does not set forth or show the manner in which he settled with the several debtors referred to in the statement filed with said report marked "L.," whether they were paid to him in the notes or liabilities of the bank or settled otherwise. He does not show what amount he received in the notes or liabilities of the bank, or in what way other than in the notes and liabilities said debts were settled.

5th. Because he had no authority as received to compromise or compound the liability of Zenas Preston, and settle with him on the terms mentioned in statement "I." filed with said report.

6th. Because he has no authority as receiver to make said settlement with said W. M. Willoughby, nor to deliver to him the notes of said bank.

7th. Because he has not entered into court the bill of Robert McCullough and the notes of E. A. Meany, referred to in statement "V.," accompanying said report.

8th. Because he does not show what amount of the liabilities mentioned in settlement "K.," filed with his report aforesaid, was paid to him in the notes and libilities of said bank, and what amount was settled otherwise, and in what way.

9th. Because he is not entitled to the credit of $89,763 94 claimed by him in Exhibit No. 2, filed with said report, as settled with Brown Brothers & Co. and others claiming under the judgment of Brown Brothers & Co. against said bank, it being contrary to his duty as receiver to make the settlement and payment therein mentioned.

10th. Because he is not entitled to the credit of $9356 39, claimed

by him in Exhibit "Z.," filed with said report, as salary or compensation for his services as receiver herein.

11th. Because all the settlements and compromises made by him as set forth in said report, except those on which he was paid the full amount due, without authority, and pertaining to his duty as receiver.

12th. Because he does not in said report account for the notes of John G. Cocks, nor for the sum of $10,000 paid by said Cocks on account thereof.

13th. Because he does not correctly set forth the manner in which he made the different settlements referred to in said report, nor what he received from the various debtors in payment of their respective liabilities, in this, to wit, that he received from William H. Johnson his notes amounting to $10,637, paid by James Brown and secured by mortgage upon land and slaves, and also in this, to wit, her notes and bills for the sum of $6652 58, payable to James Brown, and secured by mortgage on land.

14th. Because he has not brought into court, as he was required to do, the notes, bills receivable, and which came to his hands as receiver and remain unsettled, nor the notes, moneys, mortgages, and other securities and things received or taken in payment or settlement of claims and choses in action, which came to his hands as receiver, and particularly the mortgages taken in payment or settlement of the liabilities of William H. Johnson and Council R. Bass.

15th. Because he has not paid into court the money he received in payment and settlement of the debts due said bank, which came into his hands as receiver for collection.

YERGER & RUCKS, and
T. A. MARSHALL,
For Defendant.

And, on the 22d day of October, A.D. 1857, the following order was entered on the minutes of this court in this cause, to wit.

BROWN BROTHERS & CO.
v.
BANK OF MISSISSIPPI.

In this cause, it appearing to the court that the original report of Charles A. Lacoste, receiver, &c., which was filed on the 7th of May, 1857, have been lost or mislaid, so that the same cannot be found, it is ordered by the court, with the consent of counsel for both parties, that a certified copy of said report made by the clerk of this court on the 2d day of May, 1857, be filed among the papers and records in this cause, in place of said original report, and that it be held and treated in all respects as said original report.

And, on the 26th day of October, 1857, the following order was entered on the minutes of this court in this cause, to wit:

BROWN BROTHERS & Co.
v.
BANK OF MISSISSIPPI et al. } No. 2873.

Ordered, that the exceptions filed herein to the report of C. A. Lacoste, receiver herein, be and the same are hereby sustained, except the exception to the allowance to said receiver, which is hereby overruled; and it is further, that said receiver be and is hereby discharged from the rule for contempt herein; and it is further ordered, that this cause be and the same is hereby transferred to the Chancery Court of Washington County, according to the statute in such case made and provided.

And, on the 23d November, A.D. 1859, the following order was entered on the minutes of the Chancery Court of Washington County, to wit:

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI et als.

Be it remembered, that on the motion of the defendant herein to confirm the exceptions to the receiver's report, heretofore sustained, and to appoint a commissioner to report the amount of moneys, debts, assets, and liabilities in the hands of receiver, and not reported or delivered, being called, and his honor, J. S. Yerger, the presiding judge of this court, being qualified to sit therein and try the same, and the names of four members of the bar who were disinterested were designated, according to the statute, and upon drawing the four said names, Richard S. Buck, Esq., a disinterested member of the bar, was drawn to preside on the trial of said motion, and thereupon the said motion of said defendants to confirm the exception to the receiver's report heretofore sustained, and to appoint a commissioner to report the amount of moneys, debts, assets, and liabilities in the hands of receiver and not surrendered or not delivered, came on to be heard before Richard S. Buck, Esq., designated as aforesaid to try the same, and the court being now sufficiently advised of and concerning the premises, doth order, adjudge, and decree, that said exceptions heretofore herein allowed be confirmed; and that said exceptions be in all things sustained, except so much and such parts of the same as excepts to the allowance of nine thousand three hundred and fifty-six $\frac{39}{100}$ dollars to said receiver, as a compensation for his services herein, which is allowed; and the court doth order, adjudge, and decree, that William L. Nugent, Esq., a commissioner of this court, take and state an account, and report the amount of moneys said Lacoste, the receiver herein, has received as such receiver, and that remains now in his hands unaccounted for, with the entries thereon, allowing him a credit for the sum of nine thousand three

hundred and fifty-six and $\frac{39}{100}$ dollars for his compensation as such receiver herein, and also that he state an account of the amounts, with interest thereon, of all the debts, claims, assets, and liabilities remaining in the hands of said receiver unaccounted for and not delivered up under the decree herein, and state in said report the particular debts, assets, and liabilities of said Bank of Mississippi which yet remains in the hands of said Lacoste, receiver, and not delivered up and surrendered under the previous order herein, with interest thereon; that said commissioner make and state his report herein upon the report of said Lacoste, receiver, &c., and the exceptions thereto sustained, and that he report herein with all convenient despatch.

Ordered, adjudged, and decreed, this 23d day of November, A.D. 1859.

J. S. YERGER,
Judge, &c.

And on the 24th day of November, A.D. 1859, the following order was entered on the minutes of the Chancery Court of Washington County, to wit:

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI and others.

On a motion for an attachment against William Cochran, agent of plaintiffs.

Be it remembered, that this motion coming on to be heard, and his Honor J. S. Yerger being disqualified to sit, he having been of counsel in the case, and Richard S. Buck, an attorney of said court, being, according to the statute in such case made and provided, duly selected to preside in this case. It appearing to the satisfaction of the court, that by a former order of this court it was adjudged and decreed that a summons should issue, summoning the said Cochran, as agent, to appear and by his answer show and exhibit and bring into this court the assets of the defendant in his possession or control, and all such assets as he may have received from C. A. Lacoste as receiver, or from any other person and now in his possession, and to account for the same. And it appearing to the satisfaction of the court, that a summons duly issued, and was duly executed on the said Cochran, in pursuance to said order and decree, and the said Cochran having failed to obey said summons and the order and decree of this court. It is therefore considered by the court and ordered, that an attachment issue against said William Cochran, so as to compel the said Cochran to appear and answer, and comply with the aforesaid decree.

Ordered, adjudged, and decreed, this November 24th, 1859.

J. S. YERGER,
Judge, &c.

To the reading of which petition of R. Cochran, and all orders in said cause made after October, 1846, being extracts of the said transcript, the plaintiff, by his counsel, then and there objected; and then and there excepted to the ruling and decision of the court permitting same to be read in evidence. It was admitted that the suit of Brown Brothers & Co. *v.* The Bank of Mississippi was instituted in the Superior Court of Chancery of Mississippi, on the 17th day of April, 1843, as shown on the first page of said transcript.

The plaintiff, by counsel, then read in evidence to the jury the portions of said transcript, in the words and figures following to wit:

"*Report of W. L. Nugent.*"

And on the 24th day of November, A.D. 1859, William L. Nugent, a commissioner appointed herein, filed his report, to wit:

State of Mississippi, Washington County. In Chancery.
November Term, 1859.

BROWN BROTHERS & Co.
v.
BANK OF MISSISSIPPI and others.

To the Honorable the Chancellor presiding in said court and cause:

The undersigned, to whom it was referred to state an account of the moneys received by Charles A. Lacoste, the receiver in the above-styled cause, &c., begs leave respectively to report, that he has discharged his duties according to requisition of the decretal order herein, and taking the said decree, the report of said Lacoste, and the exceptions thereto sustained, as a basis of calculation, he stated an account as required; and hereby reports, on the 7th day of April, A.D. 1857, the said Lacoste had received, in his fiduciary capacity, and has not since accounted for the same, one hundred and eighteen thousand seven hundred and eighty-five $\frac{87}{100}$ dollars; that allowing said Lacoste credit as specified in said decretal order, there would be and was on said 7th April, 1857, in his hands, $\$109,429\frac{48}{100}$, and the amount now in the hands of said receiver unaccounted for, with the interest thereon, is in the aggregate $\$125,843\frac{85}{100}$.

Your commissioner would further report, that he has stated an account of the debts, assets, liabilities, &c., remaining in the hands of said receiver, and not delivered up under the Superior Court of

Chancery, and that the aggregate amount thereof, with interest, is $223,411$\frac{29}{100}$, made up of the following items, to wit: $107,360$\frac{15}{100}$ long loans, being portion of the first item of the report of said Lacoste in second item to said report; $57,448$\frac{85}{100}$, money unaccounted for in report, and being the amount illegally surrendered by Lacoste in his compromise of sundry long loans; $3292, loans in suspense unaccounted for, being third item in said report; $23,812, notes and bills, being item fourth to said report, being illegally surrendered on compromise. Your commissioner would further report, that he has calculated interest upon the above items, which added to the principal for a period of time entirely too short, but that he has been unable to gather the exact dates from which to calculate interest, and could infer them from the report of said Lacoste and the other papers furnished him. He would further state, that the other assets referred to in the 7th exception to the report of said Lacoste, the amount of which he could not discover, that he has faithfully and diligently examined, to discharge his whole duty; and has always given, in his calculation, the benefit of any doubt as to the said Lacoste. And having fully reported, he prays that this his report be ratified, approved, and confirmed.

All of which is respectfully submitted.

WM. L. NUGENT,
Commissioner.

And on the 25th day of November, A. D. 1859, the following order was entered on the minutes of said court, to wit:

BROWN BROTHERS & CO.
v.
THE BANK OF MISSISSIPPI and others.

Be it remembered, that on the motion of defendants to confirm the report of the commissioner, W. L. Nugent, filed herein, coming on to be heard before Richard S. Buck, an attorney of this court, who was selected according to law to try the above-stated case, and no exception having been made or taken to said report. It is ordered, adjudged, and decreed that said report be and the same is hereby in all things confirmed; and it is further ordered, adjudged, and decreed, that said C. A. Lacoste, receiver, pay forthwith into court the sum of one hundred and twenty-five thousand eight hundred and forty-three dollars and eighty-five cents, $125,843$\frac{85}{100}$, the amount of money in his hands as receiver unaccounted for, and also the further sum of two hundred and twenty-three thousand four hundred and eleven dollars and twenty-nine cents, $227,411$\frac{29}{100}$, it being the amount of bills, bonds, assets, &c., which came to his hands as receiver, and are unaccounted for by the said Lacoste as receiver, as appears by said commissioner's report, amounting in all to the sum of three hundred

and forty-nine thousand two hundred and fifty-five dollars and fourteen cents, $349,259\frac{14}{100}$. It is ordered, adjudged, and decreed that said Lacoste pay forthwith into court the said last-mentioned sum of $349,255\frac{14}{100}$. And it appearing to the satisfaction of the court that said Lacoste has failed to pay said several sums of money into court, it is ordered, adjudged, and decreed that a scire facias issue on receiver's bond of the said Lacoste against the said Lacoste, his securities, or either of them, according to the statute in such case made and provided.

Ordered, adjudged, and decreed this 25th day of November.

J. S. YERGER,
Judge, &c.

And above, as set forth truly, are the testimony in the case offered and given in evidence by both parties to the jury, the plaintiff, by his counsel, asked and requested the court to instruct the jury as follows, to wit:

That the surrender of one right is sufficient to support the acquisition of another, and the suspension or extinguishment of the remedies held or claimed, or that might be resorted to by a creditor, will sustain an express promise by the debtor, or by a third person, for the discharge of the debt, or for the performance of any other new or distinct undertaking, and especially will support a promissory note which imparts a valuable consideration.

That the issue to be tried before this jury is not as to the authority or want of C. A. Lacoste, but whether the notes sued on are founded on a consideration good in law, or whether such consideration, if any, has failed.

That the power of C. A. Lacoste, as receiver, extended to and embraced the right to collect the debts due to the Bank of Mississippi, and his acts in the cause of such collection, or in the disposition of the funds after collection, even if he has acceded his power and violated his duty as receiver, are not absolutely void to all intents and as to all persons, but can only be avoided by proper proceedings in court, and by some person having a right to complain of injury thereby, and that the defendant does not occupy such relation to said receiver as to authorize him to take advantage of or to complain of such act.

That no man can take advantage of his own fraud, or of a fraud in which he participates, and if they believe from the evidence that defendant got possession of his notes to the Bank of Mississippi and proved the dismissal of suits against him by his contract with the agent of plaintiff, he cannot complain of or have advantage of the fraud in the transaction arising out of the violation of his duty by the receiver, even if the jury should be satisfied from the evidence that such fraud was in fact committed.

That the assent of the Bank of Mississippi to the surrender of the notes of defendant by said receiver may be inferred from and proved

by circumstances, and if the jury are satisfied by the evidence, and by all the circumstances as proved in the case, that the Bank of Mississippi knew of, or by proper diligence might have known of such surrender of said notes, and did not complain thereof, but acquiesced therein for a considerable time, such acquiescence amounts to a ratification of the act.

That the surrender and discharge of the indebtedness of the defendant to the Bank of Mississippi was a sufficient consideration to support the notes sued on in this action, and whether such surrender and discharge has since proved beneficial to the defendant is immaterial in this issue, and the subsequent dismissal of the bill of complaint of Brown Brothers & Co. *v.* The Bank of Mississippi, in the Superior Court of Chancery of Mississippi, for the want of jurisdiction, cannot be taken advantage of by the defendant, for the purpose of impeaching the consideration of the notes sued on, and the court then at the request of defendant by his counsel instructs the jury as follows: that a promissory note imports a valuable consideration, and the burden of proof to show that there is a want or failure of consideration is upon the defendant.

If the jury believe from the evidence that the notes sued on in this case were given in renewal, or in lieu of, or in substitution from the old notes of defendant, which were placed in the hands of Charles A. Lacoste as receiver, in the case of Brown Brothers & Co., against the Bank of Mississippi, that their consideration of the notes sued on is illegal, and they must find for the defendant.

That the original or old notes of defendant, placed in the hands of Lacoste as receiver, were the property of the Bank of Mississippi, and neither Lacoste, nor Brown Brothers & Co., had any right, without the leave of the court wherein he was appointed such receiver, had any right or authority to surrender or deliver up to defendant said notes; and if he, Lacoste, or they, Brown Brothers & Co., did, without such leave or authority, surrender or deliver up said notes to defendant, he, defendant, was not thereby discharged from his liability to the Bank of Mississippi, but his liability to the bank would still remain, notwithstanding such delivery or surrender of his notes herein sued on are without any legal consideration, and the defendant not liable to the plaintiff herein thereon; the notes of said Johnson, originally received by him, and the notes now sued on herein, in renewal or in lieu of or in substitution for them, is conclusive evidence that the Bank of Mississippi did not acquiesce in or confirm the settlement made by Lacoste, and estops the plaintiff from asserting that Lacoste had the right to make such settlement with the defendant, to which seconal payment, rulings, and decisions of the court refusing to give instructions asked by plaintiff, and gives instructions asked by defendant, the plaintiff by his counsel, then and there, and before the jury retired from the bar, excepted and tender this his bill of exceptions, and prayed that the same may be signed,

sealed, enrolled, and made part of the record; which is done accordingly.

Witness my hand and seal, this 23d May, 1860.

S. J. GHOLSON. [SEAL.]

May Term, 1860.

JAMES BROWN
v.
W. H. JOHNSON. } 2.

Be it remembered, that this coming on to be tried before the Hon. Samuel J. Gholson, judge, &c., and a jury, the plaintiff offered to read to the jury in evidence, a paper, being certified by J. T. Sims, clerk of the Superior Chancery Court of Mississippi, with the certificate in the words and figures following (here see pages 14, 15, 16, 17, 18, and 19). Which, on the objection of defendant by his counsel, the court refused to permit to be read to the jury in evidence. To which ruling and decision of the court, the plaintiff by his counsel, then and there, before the jury retired, instantly excepted and tendered this his bill of exceptions, and prayed the same to be signed, sealed, enrolled, and made part of the record; which is done accordingly.

Witness my hand and seal, this 23d May, 1860.

S. J. GHOLSON. [SEAL.]

In the Circuit Court of the United States, Southern District of Mississippi, May Term, 1860.

JAMES BROWN
v.
WM. H. JOHNSON.

Be it remembered, that on the trial of the above-stated cause before the jury, the defendant, by his counsel, offered to read in evidence to the jury, parts of a complete transcript of the suit of Brown Brothers & Co. *v.* The Bank of Mississippi, which in the words and figures follows, to wit:

Petition of Complainants, filed June 23d, 1846.

Superior Court of Chancery of Mississippi.

BROWN BROTHERS & CO.
v.
THE BANK OF MISSISSIPPI.

To the Honorable Stephen Cocke, chancellor, &c., &c.

Robert Cochran, agent of the complainants in this cause, sgs

leave to state to your honor, that he has been under the necessity of advancing the sum of sixty-three hundred and eight $\frac{51}{100}$ dollars (as appears by the accompanying account), to C. A. Lacoste, receiver appointed in this case, to enable him to carry on the current business of his office, the particulars of which will appear by reference to said account, there being no funds among the assets of said bank available for the purpose, and with a view to avoid the sale of the bank notes in the hands of said receiver. Your petitioner, in behalf of his principals, the said complainants, therefore respectfully prays that your honor allow the amount of the said account, with the addition of thirty per centum thereon (the current rate of discount on the circulation of the said bank below the standard of specie, the items of said account having been all paid in the latter), as a claim against the said bank, so that he may avail himself of any opportunity that may offer to dispose of the same to the debtors of the bank, and thus reimburse himself.

And, as in duty bound, your petitioners will ever pray, &c. &c.

ROB. COCHRAN.

Order of Court.

And on the 14th day of June, 1852, the following order was entered on the minutes of this court in this cause, to wit:

BROWN BROTHERS & Co.
v.
BANK OF MISSISSIPPI et al.

Ordered, that defendant, W. Penrice and D. F. Blackburn, plea, answer, or demur to the complainants' bill by the next rule day of this court, and that, in default thereof, that the several allegations of said bill be taken for confessed, as to them.

The demurrer of David F. Blackburn, William Penrice, and John L. Chapman, defendants, to the bill of complaint of Brown Brothers & Co., complainants, in the Superior Court of Chancery of the State of Mississippi.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' original and annexed bills mentioned to be true, in such manner and form as the same are therein set forth and alleged, do demur thereto, and from cause of demur show that this court has no jurisdiction of the matters and things stated in said bills; and said complainants have not, in and by their said bills, made or stated such a case as doth or ought to entitle them to such discovery or relief as is thereby sought and prayed for from or against these defendants or either of them.

Wherefore they pray the judgment of this honorable court, whether they shall be compelled to make any further or other answer.

T. A. MARSHALL,
W. C. SMEDES, and
JACOB S. YERGER,
Solicitors for Defendants.

And on the fourth day of March, A.D. 1853, the following order was entered on the minutes of this court in this cause, to wit:

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI et al.

Ordered, that the motion herein, for leave to the receiver, C. A. Lacoste, to compromise on the part of the Bank of Mississippi, and of the plaintiffs to compromise with the various debtors to the Bank of Mississippi, and for leave to apply the amount received by such compromise to the credit of the debt of complainants, &c., be, and the same is hereby overruled.

Superior Court of Chancery, June Term, A.D. 1854.

BROWN BROTHERS & Co.
v.
BANK OF MISSISSIPPI and others.

J. S. Yerger makes oath that he has been informed and believes that Charles A. Lacoste, the receiver appointed by the court in the above-stated case, has permitted the agent of the complainants to enter into compromise and arrangements with the debtors of the Bank of Mississippi of their debts, the money of which were placed in the hands of said Lacoste, as receiver as aforesaid, whereby the agent of said complainants agree to take much less than the amount due from said debtors, when the said notes were perfectly solvent, and permitted said agent of the complainants to receive the new securities made payable to the complainants, and also the moneys paid upon such arrangements from time to time, and said estate delivered to complainants' agent, or to the debtors, the notes of such debtors, so as to enable such arrangement to be made and come at. Affiant is informed that said new sureties, and the moneys received upon such arrangement, have, as affiant is informed and believes, been left in the hands of said complainants, and not accounted for as reported to this court.

J. S. YERGER.

Sworn to and subscribed before me, June 7th, 1854.

L. MIMS.

Cour in Chancery.

And on the 19th day of January, A.D. 1855, the following order was entered upon the minutes of this court in this cause, to wit:

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI et al. } Submitted on motion.

And on the 27th day of January, A.D. 1855, the following order was entered on the minutes of this court, in this cause, to wit:

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI.

Upon motion of the defendant in the above-stated cause, and after agreement had therein, in presence of counsel upon both sides, the chancellor being fully advised thereof, it is ordered, adjudged and decreed, that Charles A. Lacoste, the receiver heretofore appointed by this court in said cause, appear, on or before the next term of this court, after the service of a copy of this order, before this court, and render a full, true, and complete and perfect account of his receivership herein, and of the state and condition of the assets of the Bank of Mississippi which came into his hands as such receiver, and that he bring into court all notes, bills, choses in action, and moneys, and all other property, choses in action and assets, of the Bank of Mississippi, which came into his hands, and the proceeds thereof, as well as all securities, notes, bonds, liens, mortgages, judgments, moneys, &c., as he may have taken and received, to secure or in payment of any of said liabilities which came into his hands, and also all notes of said bank, and all books, papers, and everything which came to his hands as such receiver in this cause, of and during the continuance of his trust. And it is further ordered, adjudged and decreed, that after the full and satisfactory accounting of said Lacoste *an* compliance with this order, that said Lacoste be discharged from said office and trust of receiver, and that the interlocutory decree appointing him be annulled and vacated.

And on the 29th day of January, 1855, the following order was entered on the minutes of this court, in this cause, to wit:

BROWN BROTHERS & Co.
v.
BANK OF MISSISSIPPI et als.

Be it remembered, that this cause, coming on to be heard before the Honorable Charles Scott, chancellor, &c., in the presence of

counsel upon both sides, upon the demurrer of D. F. Blackburn and others, and upon motion of other defendants in said cause, and after argument had thereon, and by the court fully understood, and it being the opinion of the court that the questions of law raised by said demurrer are in favor of said defendants demurring. It is ordered, adjudged, and decreed, that said demurrer be sustained, and the said bills as to said defendants be dismissed, and upon inspection of the record in said cause, it appearing to the satisfaction of the chancellor that this court has no jurisdiction of the same, to grant relief or proceed against any of said defendants.

It is ordered, adjudged, and decreed, that complainants' original, amended and supplemental bills be dismissed as to all proceedings against any of said defendants for relief, but that said cause be retained in this court for the purpose of proceeding against the receiver appointed in said cause, to enforce and close his account as receiver, and compel the return of the assets of the defendant the Bank of Mississippi, or their proceeds, into this court. It is further ordered, adjudged, and decreed, that said complainants pay the cost of this suit.

And the complainants, praying an appeal from the foregoing decree, the same is granted to the next term of the High Court of Errors and Appeals, upon their entering into bond in the penalty of two hundred dollars, conditioned according to law, with W. P. Anderson as security, to be approved by the chancellor, within thirty days.

Decree of High Court.

The State of Mississippi, to the Honorable the Superior Court of Chancery, greeting:

Whereas, at a term of our High Court of Errors and Appeals, began and held at the capitol at Jackson, on the 3d day of October, A.D. 1856, a decree was rendered by our high court, on the 2d day of December, as follows, to wit:

BROWN BROTHERS & Co., appellants,
v.
THE BANK OF MISSISSIPPI. } 7341.

Comes Mr. Marshall, of counsel for the appellees, and moves the court here to reconsider and set aside the last judgment entered in this cause, and permit the judgment first entered to stand, and said motion being agreed by Mr. Marshall, of counsel for appellees, and this court being now of opinion that said judgment and decree first entered by this court herein, on the 10th day of November, A. D. 1856, was correct and proper, and that said last order herein, on the 29th day of November, A.D. 1856, ought now to be set aside and rescinded, and said first judgment restored.

It is now accordingly considered, and so ordered, adjudged, and decreed, that the decree of said Superior Court of Chancery, rendered in this cause at the December term thereof, in the year 1854, and on the 29th of January, A.D. 1855, be and the same is hereby affirmed.

And it is further considered, and so ordered, adjudged, and decreed, that the appellees do have and recover of the appellants, and William M. W. Cochran and Warren P. Anderson, sureties in the appeal bond, the costs of this cause in the court below, and in this court expended, &c., to be taxed, &c.

You are therefore commanded, that such execution and further proceedings be had in said cause as, according to right and justice, the decree of our said High Court and the law of the land ought to be had.

Witness the Honorable C. P. Smith, presiding judge of our said High Court, and seal of said court hereto affixed, at office [SEAL.] at Jackson, this 8th day of December, A.D. 1856.

GEORGE T. SWAN,
Clerk.
By SAMUEL LIVINGSTON,
D. C.

Order of Court and Proceedings.

And on the 11th day of December, A.D. 1856, the following order was entered on the minutes of this court in this cause, to wit:

BROWN BROTHERS & Co.
v.
BANK OF MISSISSIPPI. } 2873.

Ordered, that Charles A. Lacoste, receiver, make his report to this court by the 2d day of March next, and that he deliver and pay into court, by the same day, all moneys heretofore collected or received by him as receiver; and also, that he deliver into said court all notes, bills of exchange, bills receivable, bonds or other securities, and all choses in action of any kind received by him as receiver; and also all notes, bonds, bills payable, choses in action, and securities of every kind that he may have taken or received, by way of substitution, or in payment or compromise of any of the debts, notes, choses in action, or securities of any kind which came into his hands as receiver.

On the 7th day of May, 1857, the following exceptions to the report of C. A. Lacoste were filed in the Superior Court of Chancery, to wit:

Superior Court of Chancery, State of Mississippi.

BROWN BROTHERS & Co.
v.
BANK OF MISSISSIPPI. } No. 2873.

Defendant, the said Bank of Mississippi, excepts to the report of Charles A. Lacoste, receiver, filed herein on the 7th day of April, 1857, for the following reasons, to wit:

1st. Because said Lacoste has not returned into court, as he was required to do, the notes, bills receivable, and other choses in action belonging to said bank which came into his hands as receiver, denominated long loans, referred to in exhibit marked "M.," with his report, and which as *alled* in said report as never collected or settled by him.

2d. Because he has not returned into court the mortgages given to secure the payment of said notes referred to in Exhibit "M."

3d. Because he has not returned into court the notes and other choses in action, numbered 1, 2, and 13, of claims called suspended debt, referred to in exhibit marked "W.," filed with said report.

4th. Because he does not set forth or show the manner in which he settled with the several debtors referred to in the statement filed with said report, marked "L.," whether they were paid to him in the notes or liabilities of the bank or settled otherwise. He does not show what amount he received in the notes or liabilities of the bank, or in what way other than in the notes and liabilities said debts were settled.

5th. Because he had no authority, as receiver, to compromise or compound the liabilities of Zenas Preston, and settled with him on the terms mentioned in settlement "I.," filed with said report.

6th. Because he had no authority, as receiver, to make said settlement with said W. M. Willoughby, nor to deliver to him the notes of said bank.

7th. Because he has not entered into court the bill of Robert McCullough and the notes of E. A. Meaney, referred to in statement "V.," accompanying said report.

8th. Because he does not show what amount of the liabilities mentioned in settlement "K.," filed with his report aforesaid, was paid to him in the notes and liabilities of said bank, and what amount *what amount* was settled otherwise, and in what way.

9th. Because he is not entitled to the credit of $\$89{,}763\frac{94}{100}$, claimed by him in Exhibit No. 2, filed with said report as settled with Brown Brothers & Co., and claiming under the judgment of Brown Brothers & Co. against said bank, it being contrary to his duty as receiver to make the settlement and payments therein mentioned.

10th. Because he is not entitled to the credit of $\$9356\frac{39}{100}$ claimed by him in Exhibit "Z.," filed with said report, as salary or compensation for his services as receiver herein.

11th. Because all the settlements and compromises made by him as set forth in said report, except those in which he was paid the full amount due without authority and pertaining to his duty as receiver.

12th. Because he does not in said report account for the notes of John G. Cocks, nor for the sum of $10,000 paid by said Cocks on account thereof.

13th. Because he does not correctly set forth the manner in which he made the different settlements referred to in said report, nor what he received from the various debtors in payment of their respective liabilities in this, to wit, that he received from William H. Johnson his notes amounting to $10,637, paid by James Brown, and secured by mortgage upon land and slaves; and also in this, to wit, her notes and bills for the sum of $6652\frac{58}{100}$, payable to James Brown, and secured by mortgage on land.

14th. Because he has not brought into court as he was required to do the notes, bills receivable, and which came to his hand as receiver and remained unsettled, nor the notes, moneys, mortgages, and other securities and things received or taken in payment or settlement of claims or choses in action, which came to his hands as receiver, and particularly the mortgages taken in payment or settlement of the liabilities of William H. Johnson and Council R. Bass.

15th. Because he has not paid into court the money he received in payment and settlement of the debts due said bank, which came into his hands as receiver for collection.

YERGER & RUCKS, and T. A. MARSHALL,
For Defendant.

And on the 22d day of October, A. D. 1857, the following order was entered on the minutes of this court in this cause, to wit:

BROWN BROTHERS & Co.
v.
BANK OF MISSISSIPPI et al.

In this cause, it appearing to the court that the original report of Charles A. Lacoste, receiver, &c., which was filed on the 7th of May, 1857, have been lost or mislaid so that the same cannot be found, it is ordered by court, with the consent of counsel for both parties, that a certified copy of said report made by the clerk of said court on the 2d day of May, 1857, be filed among the papers and recorded in this cause, in place of said original report, and that it be held and treated in all respects as said original report.

And on the 26th day of October, 1857, the following order was entered on the minutes of this court in this cause, to wit:

BROWN BROTHERS & Co.
v.
BANK OF MISSISSIPPI. } 2873.

Ordered, that the exceptions filed herein to the report of C. A. Lacoste, receiver herein, be and the same are hereby sustained, except the exception to the allowance to said receiver, which is hereby overruled; and it is further that said receiver be and he is hereby discharged from the rule for contempt herein; and it is further ordered that this cause be and the same is hereby transferred to the Chancery Court of Washington County, according to the statute in such case made and provided.

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI. }

On a motion against Charles A. Lacoste, receiver, to bring into court the assets of the bank, and to report A. F. Smith, a stockholder in said bank, who states on oath, William Cochran, who resides in the county of Adams, the agent of the complainants, and has in his possession or control a portion of the assets of the Bank of Mississippi, which he has received from the said Charles A. Lacoste, or has collected from some of the debtors of said bank, as this affiant is informed and verily believes, he therefore prays for the process of this court compelling the said William Cochran to appear and show to this honorable court what assets, bonds, bills, notes, or other property of the Bank of Mississippi he has in his possession, or agent of Brown Brothers & Co., what money he has procured from the debtors of said bank, or has been collected from them; how much property, assets, bonds, bills, notes, he has received from the said C. A. Lacoste, receiver, and that he be compelled to make a full exhibit of the same to this honorable court.

A. F. SMITH.

Sworn to and subscribed before me this 12th day of November, 1858.

JAMES D. BLINCOE,
Clerk.

On the 12th day of November, A.D. 1858, the following order was entered on the minutes of the Chancery Court of Washington County, to wit:

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI. } No. 52.

On a motion of defendant on affidavit filed for process to issue against William Cochran, agent for complainants, to bring into court

the assets of defendants in his possession or control, and also such assets as may have received from C. A. Lacoste, as receiver, or any other person, and now in his possession, and to account for the. It appearing that the presiding judge having been of counsel in the case, and therefore disqualified from sitting, W. L. Neugent, Esq., an attorney of said court, was designated to sit in the case, and the motion coming on to be heard before the said William L. Nugent, Esq., it is considered, adjudged, and decreed by the court, that a summons issue to the county of Adams, summoning the said Cochran to appear at the next term of this court, and answer and comply with this order.

On the 27th day of November, A.D. 1858, the following subpœna in chancery was *issed*, to wit:

The State of Mississippi, Chancery Court of Washington County, to wit:

To William Cochran, greeting.

For certain causes offered to us in our Chancery Court of Washington County, we command and strictly enjoin you, that, laying all other matters aside, notwithstanding any excuse, you personally appear at a Chancery Court, to be holden at the court-room, in the town of Greenville, on the second Monday in May next, and to bring into court with you the assets of the Bank of Mississippi in your possession or control, and also such other assets you may have received from C. A. Lacoste, receiver of said bank, or any other person, and now in your possession or control, and to account for the same; and this you shall in nowise omit, under the penalty of one hundred dollars, as well as the consequence that may fall thereon.

[L. S.] Given under my hand and the seal of said court, this 27th day of November, A.D. 1858.

JAMES D. BLINCOE,
Clerk.

To the sheriff of Adams county, to execute and return.

Sheriff's Return.

Executed personally by copy, January 18th, 1859.

O. METCALF,
Sheriff.

Per JAS. A. STEELE,
D. S.

To the reading of which petition of said Cochran, and all orders in said cause, after October, 1846, contained in the said transcript, the plaintiff by his counsel then and there objected, and the court overruled the objection, and permitted the same to be read to the

jury. To which ruling of the court the plaintiff by his counsel then and there excepted, and tenders this his bill of exceptions, and prays that the same may be signed, sealed, and enrolled, and made a part of this record in this cause, which is accordingly done.

S. J. GHOLSON. [SEAL.]

JAMES BROWN
v.
W. H. JOHNSON. } May Term, 1860.

Be it remembered, that this cause, coming on for trial before the Hon. Samuel J. Gholson, judge, &c. &c., a jury. The plaintiff, by his counsel, during his concluding argument, offered to read to the jury, after the evidence had been closed and the defendant's counsel had addressed the jury, certain portions of a transcript of the suit of Brown Brothers & Co. *v.* Bank of Mississippi et al., which transcript was before the court duly certified, which portions proposed to be read are in the words and figures following, to wit:

Petition of C. A. Lacoste.

In the Superior Court of Chancery, Mississippi.

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI et al. }

To the Hon. Stephen Cocke, chancellor, &c.

The undersigned receiver, appointed by a decree of this honorable court, in the above-stated cause, respectfully asks the allowance by the court of the annexed account, amounting to five thousand dollars, which embraces solely the item of his compensation for services and clerk hire, indispensably necessary to him in the discharge of his duties. This is the first application made by the undersigned for such compensation since he has held the said office of receiver. The reason why he has not before this preferred his claim is, that he was willing to await collection before pressing it. His report to you, your honor, including the one made by this term, shows that he is now progressing steadily towards a successful settlement of the affairs of the said institution, and that the amount claimed for his own services in this annexed account is about 5 per cent. on the sum total of receipts made by him from all sources since he first entered upon the duties of his office, which your honor will certainly admit is quite reasonable, when the trouble and responsibilities are considered. The remainder is for clerk's hire, which he was compelled to procure to keep such complex books and papers as those belonging to a banking institution of the magnitude of the one in question in proper order and condition.

Respectfully submitted,
C. A. LACOSTE,
Receiver.

We have examined the foregoing petition for compensation, and think it reasonable and just, and in behalf of those we represent consent to its allowance.

MONTGOMERY & BOYD.

June 16th, 1846.

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI. } In Chancery.

Compensation of C. A. Lacoste, receiver, appointed in above case.

June 12th, 1844, for his services to June, 1846.

2 years at $2000 per annum, ...	$4,000 00
Do. services of Thomas W. Clay, clerk employed by said receiver in keeping books, papers, and accounts, and attending generally to the business of the said bank, as necessary auxiliary to the said receiver. 2 years at $500 per annum, ...	1,000 00
Total,	$5,000 00

To the Clerk of the Superior Court of Chancery.

The recommendation and consent of counsel being had in the above case for the same, let an order be made allowing Charles A. Lacoste, receiver, five thousand dollars of the funds in his hands as receiver, for his services and clerk hire for as receiver from the 12th day of June, 1844. Ordered 14th day of January, 1847.

STEPHEN COCKE,
Chancellor.

Petition of Complainants, filed June 22d, 1846.

Superior Court of Chancery of Mississippi.

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI et als.

To the Honorable Stephen Cocke, Chancellor, &c., &c.

Robert Cocheran, agent of the complainants in this cause, begs leave to state to your honor that he has been under the necessity of advancing the sum of sixty three hundred and eight $\frac{51}{100}$ dollars (as appears by this accompanying account), to C. A. Lacoste, receiver appointed in this case, to enable him to carry on the current business of his office, the particulars of which will appear by reference to said account, there being no funds among the assets of said bank available for the purpose, and with a view to avoid the sale of the bank notes in the hands of said receiver.

Your petitioner, in behalf of his principals the said complainants, therefore respectfully prays that your honor allow the amount of the said account, with the addition of thirty per centum thereon (the current rate of discount on the circulation of the said bank below the standard of specie, the items of said account having been all paid in the latter), as a claim against the said bank, so that he may avail himself of any opportunity that may offer to dispose of the same to the debtors of the bank, and thus reimburse himself.

And as in duty bound your petitioner will ever pray, &c., &c.

ROB. COCHRAN.

PRINCETON, 14th February, 1843.

Resolutions.

The board of directors met; present, F. F. Turnbull, John L. Chapman, John G. Cocks, David Suggett, Ambrose Knox, and A. W. McAllister; and it appearing from the certificate of Thomas Kershaw and Philip A. Cocks, that F. G. Turnbull, David Suggett, A. W. McAllister, John L. Chapman, John G. Cocks, Andrew Knox, Ambrose Knox, David F. Blackburn, William J. Penrice, A. B. Montgomery, and Robert P. Shelby, were duly elected directors of the Bank of Mississippi for the year 1843, at an election held on the first Monday of January, 1843, pursuant to an order of a previous board.

The board of directors having organized, and John G. Cocks being called to the chair, the board proceeded to elect a president by ballot, and it appearing that D. F. Blackburn, having the majority of votes, was duly elected president of said board of directors, D. F. Blackburn being absent, it is moved that F. G. Turnbull be appointed president "pro tem.," which motion carried, and F. G. Turnbull took the chair and called the meeting to order for business.

Resolved, D. F. Blackburn, John L. Chapman, and Ambrose Knox, be appointed a committee to arrange the debts of Alfred Cox, deceased, and John G. Cocks, by the redemption of the tract of land fronting on the Mississippi river, belonging to said Alfred Cox at the time of his death, and since purchased under execution by the said John G. Cocks, and by him sold to Philip A. Cocks, the said committee to have full power and authority to arrange, compromise, compound, and redeem, in such manner and on such terms as they may deem best under the circumstances, to take and receive from the proper person deeds of redemption, and to have full power in relation to the whole matter that the board of directors possess in full session.

Resolved, That the cashier be directed to receive in payment of any debts due the bank any of its debts, obligations, or liabilities now due and outstanding, or to become due, dollar for dollar, to receive the same in payment of any debts due, or to become due, and to re-

bate interest at the rate of eight per cent. per annum on such debts as are not due, and do not bear interest until due, when payment is tendered in such debts.

Resolved, That the cashier is hereby authorized and directed to transfer to Brown Brothers & Co., with the consent of the debtors, any of the bills receivable of the bank, in payment and liquidation of the debt due by the bank to them, in lieu of cash; and he is further directed to allow the said firm of Brown Brothers & Co., for receiving the bills as aforesaid, a premium not exceeding fifteen per cent. on the amount received.

Resolved, That the stockholders of this bank who have paid in only a part of their stock, and have not arranged their stock debt according to the order and resolution of the board made heretofore, be and are hereby only allowed stock and certificates of stock to the amount actually paid in, that they shall be held and considered only as stockholders to the amount actually paid in, and be allowed to vote and receive dividends only in and to that amount and proportion, and their notes, which were given for the remainder of their stock upon their accepting the terms of these resolution, and hereby cancelled and directed to be cancelled and delivered up by the cashier.

Resolve, That the cashier be directed to strike a balance on the books of the bank, and report the balance due, taking into consideration all the notes and bills receivable due, or to become due, except the stock notes, that a dividend be declared to the amount of said profits.

Resolve, That each stockholder who has arranged his stock in pursuance to an order of a previous term of the board, be allowed the amount of his dividend, to be credited on his stock notes, and that he may pay off the remainder of stock note by transfer of certificates of stock, dollar for dollar.

Signed, A. F. SMITH,
Pro tem.

I certify the above and foregoing three pages to contain a true and correct copy of the proceedings of the board of directors of the Bank of Mississippi, held at Princeton, Miss., on the 14*the* February, 1843, as they are of record in the directors' journal of said bank now in my hands.

CHAS. A. LACOSTE,
Receiver in Chancery.

NATCHEZ, November 29th, 1845.

Order of Court and Exhibits.

And, on the 9th day of January, 1847, the following order was mentioned on the minutes of this court in this cause, to wit:

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI.

The recommunication and consent of counsel being first had in the above cause for the same, it is ordered, that the sum of five thousand dollars be allowed to Charles A. Lacoste, the receiver herein, for his services as such receiver, and for clerk hire, from the 12th day of June, 1844, to the 12th day of June, 1846, which sum the said receiver may take and receive of any money in his hands as such receiver.

And, on the 4th day of February, A.D. 1847, the following order was entered on the minutes of this court:

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI.

Ordered, by consent of parties, that complainants have leave to amend the prayer of their amended bill, by interlining the same so as to make Abraham F. Smith, trustee of Alfred Cox, a defendant herein.

In the Superior Court of Chancery of Mississippi.
June Term, 1847.

BROWN BROTHERS & Co.
v.
THE BANK OF MISSISSIPPI et als.

The undersigned receiver in this cause begs leave to report that, since June term, 1845, he has collected and settled of the debts due to said bank, and taken possession of by him, as officer of this honorable court, the following, to wit:

From T. H. Buckner, his own and D. Montgomery, .		$6,582 38
" Charles Trumbull, ...		233 50
" W. E. Hall, ...		150 16
" S. R. Dunn, ...		876 94

From F. Penrice Est.,	9,376	04
" F. G. Turnbull,	12,101	88
" G. W. Ware,	4,835	87
" A. W. McAllister,	3,677	31
" W. P. Montgomery,	1,616	17
" Penrice & Likens,	453	45
" W. A. Drumgoole Est.,	7,311	47
" J. S. Fisher,	1,500	00
" W. G. Holmes,	1,932	16
" Daniel Bradford,	2,948	33
" J. D. Harding,	132	19
" W. Coleman,	850	00
" M. C. Loften,	3,194	37
" J. Turnbull's Est.,	13,801	20
" W. H. Johnson,	15,111	08
" Ambrose Knox,	14,533	80
" S. R. Dunn (bal.),	725	93
Total,	$101,944	23
Of this there was embraced in my report June, 1846,	35,879	07
The difference,	$66,065	16

Say sixty-six thousand and sixty-five $\frac{16}{100}$ dollars ($66,065 16), being the amount of my collection and settlements during the past year. All in the liabilities of the said Bank of Mississippi.

In these settlements there has been arranged $57,502 08 of the complainants' judgment claim against said bank, as per their acknowledgments in my possession.

From this and my previous report it is shown that there has been a constant and very satisfactory progress made by this receiver towards that liquidation of the affairs of said bank, which was the object of his appointment, notwithstanding that his efforts has been materially embarrassed by the two warrants proceeding in behalf of the State against the said bank, which are still pending.

The undersigned respectfully prays for the allowance of his annual compensation of $2500 (twenty-five hundred dollars) for his own services and clerk hire, from June 1846 to June 1847, which your honor has heretofore been pleased to establish, and as in duty bound will ever pray, &c.

CH. A. LACOSTE,
Receiver.

NATCHEZ, 5th June, 1847.

To the reading of which to the jury, the defendant by his counsel objected, and said objection was sustained, and the court refused to permit same to be read to the jury in evidence.

To which ruling, judgment, and decision of the court, the defendant by counsel then and their instantly, and before the jury retired from the bar, and tendered this his bill of exceptions, and prayed the same to be signed, sealed, enrolled, and made part of the record, which is done accordingly.

Given under my hand and seal this 23d May, 1860.

S. J. GHOLSON. [SEAL.]

Upon their oaths do say, they fined for the defendant on the issue joined.

Judgment.

Therefore it is ordered by the court, that the said James Brown, plaintiff herein, take nothing by his said bill, but for his false clamor be in mercy, &c., and that the said defendant, William H. Johnson, go thereof hence without day, and recover of and against said plaintiff his costs and charges by him about his defence in this behalf expended.

Writ of Error Bond.

United States of America, Southern District of Mississippi, *set.*

Know all men by these presents, that we, James Brown, A. Burwell, and Josiah Winchester, are held and firmly bound unto William H. Johnson, in the just and full sum of one thousand dollars, lawful money of the United States, to be paid to the said William H. Johnson, his lawful attorney, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals and dated the 28th day of May, A.D. one thousand eight hundred and sixty.

The condition of this obligation is such, that whereas, at a term of the Circuit Court of the United States for the Southern District of Mississippi, commenced and held at the city of Jackson, on the first Monday of May, A.D. 1860, judgment was rendered by said court in favor of the said James Brown, for costs of suit, and the said James Brown has sued out a writ of error from the Supreme Court of the United States to reverse said judgment.

Now, if the said James Brown shall prosecute his said writ of error to effect, and shall well and truly pay and satisfy such costs as the said Supreme Court of the United States shall adjudge in the premises, if he, the said James Brown, shall fail to make his plea good, then and in that case this obligation to be void, otherwise to remain in full force and virtue.

JAMES BROWN, [SEAL.]
Per A. BURWELL,
Attorney, &c.
A. BURWELL. [SEAL.]
J. WINCHESTER. [SEAL]

Sealed and delivered in open court.

W. H. BROWN,
Clerk.

United States of America.

Southern District of Mississippi, Circuit Court United States.

I, William H. Brown, clerk of said Circuit Court, do hereby certify that the foregoing eighty-one pages contain a full, true, and complete transcript of the record of the judgment between the parties therein named, together with a true and correct copy of the writ of error bond filed and approved therein, as the same now remain of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Jackson, this 17th day of Novem-
[SEAL.] ber, A.D. 1860, and of the independence of the United States the 85th.

W. H. BROWN,
Clerk.

United States of America.

Southern District of Mississippi, Circuit Court United States.

I, Samuel J. Gholson, presiding judge of said Circuit Court, do hereby certify that William H. Brown, whose name is subscribed to the foregoing certificate, is, and was at the time of signing the same, clerk of said Circuit Court, and that his attestation is in due form of law.

Given under my hand and seal, this 20th day of November, A.D. 1860.

S. J. GHOLSON. [L. S.]

Supreme Court of the United States.

No. 47.

JAMES BROWN, PLAINTIFF IN ERROR,

vs.

WILLIAM H. JOHNSON.

This case comes up by writ of error to the circuit court of the United States for the southern district of Mississippi.

It is, in all particulars, the same as the next preceding case on the docket—that of the same plaintiff against E. P. Bass, except that this is an action at law, the other a suit in equity.

The Case.

The plaintiff declared upon five promissory notes, with the common money counts. (Rec., p. 3.)

The defendant pleaded non-assumpsit, and the statute of limitations. (Rec., p. 6.)

The case was tried upon an agreed statement of facts and portions of the record of the case of Brown, Brothers & Co., vs. the Bank of Mississippi, in the superior court of chancery, admitted in evidence by agreement, which are made part of the record. (Rec., p. 9.) The facts so stated are, in substance, as follows:

Brown, Brothers & Co., filed a creditor's bill against the Bank of Mississippi, and debtors of the bank, and after filing the bill, recovered a judgment against the bank, which they afterwards alleged, and exhibited in a supplemental bill. Upon their application C. A. Lacoste was appointed receiver of the bank, with authority to take possession of assets and collect

debts, and for this purpose to bring suits, &c. (Rec., p. 10.) Among its assets were certain notes of Wm. H. Johnson, on some of which Lacoste brought suit. Johnson being thus pressed, was "met" by Cochran, an agent of Brown, Brothers & Co., and it was agreed between them "that Johnson should take up the said notes sued on and held by Lacoste" and give "new notes, therefor, payable to said James Brown, which said new notes should be for seventy cents on the dollar of the old notes and interest; the new notes to be secured by mortgage." (Rec., p. 10.)

In pursuance of this agreement Cochran assigned to Johnson, or bearer, a portion of the judgment held by Brown, Brothers & Co., against the bank, equal in amount to Johnson's whole debt, and passed this assignment to Lacoste, who gave Cochran an order for Johnson's notes then in suit, and Cochran caused the suit to be dismissed, and all Johnson's notes and the mortgage securing them, to be delivered up to him, and received therefor the notes now sued on.

Lacoste was appointed receiver in June, 1844, and the transaction between the plaintiff and defendant took place in 1846. In 1855, upon demurrer filed by two debtors of the bank, defendants, the court decreed that the complainant's bills, original and supplemental, "be dismissed as to any of said defendants for relief, and that the said cause be retained in this court for the purpose of proceeding against the receiver appointed in this cause, to enforce and close his accounts as receiver, and compel the return of the assets of the defendant, the bank of Mississippi, or their proceeds, into this court." (Rec., p. 16.) And he was finally ordered to bring into court all notes, bills of exchange, &c., &c., received by him as receiver, and all notes, &c., &c., that he may have taken or received by way of substitution or in payment or compromise of any of the debts, notes, &c., &c., which came into his hands as receiver. (Rec., p. 33.)

In obedience to this order, Lacoste brought in, as he said, all the assets remaining in his hands, and asked credit for expenses, for losses suffered in compromises, and for payments made of debts due the bank. (Rec., p. 17.) Upon statement of his account he was refused credit either for losses sustained in compromises or for payment of debts due the bank, and he and his securities, (Brown, Brothers & Co., among others,) were decreed to pay in cash the entire nominal value of all assets not brought into court, with interest, amounting to $349,259, (Rec., p. 39,) which sum actually

exceeded the entire nominal value of all the assets which had ever come into his hands. (Rec., p. 17.)

The Questions.

The instructions asked and obtained by the *defendant* and the evidence offered by him and admitted, set up this defence: (Rec. p. 41.)

That Lacoste had no right to surrender the notes without leave of the court; that if he surrendered them without leave, Johnson still remains liable to the bank; that if Johnson still continued liable to the bank, then the new notes given to Brown were without consideration, and the plaintiff could not recover upon them; and that the proceedings in the court were conclusive evidence that the bank did not acquiesce in the surrender, and estopped the plaintiff to assert Lacoste's authority to surrender them.

The instructions asked by the *plaintiff* (Rec., p. 40) make this answer to the defence:

That whatever was Lacoste's authority or want of authority, the delivery of his old notes to Johnson and the dismissal of the suit against him, both procured by the plaintiff, were a sufficient consideration for the notes sued on.

That the old notes having been obtained by the plaintiff from Lacoste, in pursuance of an arrangement made for that purpose between the plaintiff and defendant, the defendant cannot now take advantage of the fraud or wrong, if any, in which he thus participated in procuring those old notes, to defeat plaintiff's action.

The grounds taken in the next preceding case between the same appellant and Bass, are applicable here, and in addition the following are suggested.

The chief error in the instructions given at the request of the defendant was in ruling that the plaintiffs were estopped to assert the authority of Lacoste to dispose of the notes, when, in fact, his act in so doing had been ratified by the court, in the order requiring him to bring in the notes, &c., &c., received by him by way of substitution or in payment or compromise of any debts, &c., &c., (Rec., p. 33,) and again, in the decree ordering him to pay the nominal money value of all assets so parted with by him. (Rec., p. 39.)

Points.

The error in refusing the instructions asked by the plaintiff was in this:

Because it was no sufficient answer for the defendant simply to deny the right of the plaintiff to transfer to him the old notes so long as he held them, and after he had obtained all the advantages he had sought in getting possession of them, and never had offered to give them back, (Orchard *vs.* Hughes, 1 Wallace, p. 73.)

The plaintiff had properly fulfilled his agreement with the defendant. He procured his notes to be delivered up, and the suit against him, to be dismissed. The suit has never been renewed, nor have the notes been claimed by any one, nor is any reasonable ground shown to believe they ever will be claimed. The bank is the only party that could now claim them, and it is submitted that such claim, if made, could not be sustained—not only because the bank had value for them in the release *pro tanto* of the judgment held by Brown, Brothers & Co., and again in the decree for their value rendered in its favor against Lacoste, Brown, Brothers &Co., and others, but also because the bank had previously authorized such arrangements with Brown, Brothers & Co., (Rec., p. 14,) and Lacoste in making this and other settlements was acting with the knowledge and acquiescence of the directors. (Rec., p. 22.)

Conclusion.

Upon the whole, it is submitted that the judgment below should be reversed, and a *venire de novo* ordered.

J. M. CARLISLE,
JNO. D. McPHERSON,
For Plaintiff in Error.